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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2169-2012 (O&M)
Date of decision : 12.07.2016

Baldev Raj

... Appellant(s)

Versus

Rajinder Parshad and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.P.S. Gill, Advocate
for the appellant(s).

Mr. Chandan Deep Singh, Advocate
for respondent Nos.1 to 3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit for separate possession by partition of building bearing No.B.XVI.439 (new) B.XVII.355 (old) situated at Nanak Puri, Miller Ganj, Ludhiana and as well as for permanent injunction restraining the respondent(s)-defendant(s) has been dismissed.

Mr. B.P.S. Gill, learned counsel appearing on behalf of the appellant-plaintiff submits that the property in dispute is measuring 117 square yards. The mother, namely, Rattan Devi, who died intestate on 21.07.1986, leaving behind the appellant(s) and defendant(s) as legal heirs. During her lifetime, she had transferred the property, aforementioned, by

way of an affidavit. The other party did not dispute the ownership of the mother, but the trial Court, much less, the lower Appellate Court did not grant the indulgence, even an application under Order 41 Rule 27 CPC at the appellate stage, was moved for want of title. The property being urban did not have any record, even the assessment register was sought to be placed on record by way of additional evidence which was also declined and thus, urges this Court for remanding back the matter to the trial Court by granting the liberty to substantiate the averments made in the suit and prays for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. Chandan Deep Singh, learned counsel appearing on behalf of respondent Nos.1 to 3 submits that there is no illegality and perversity in the findings, under challenge and prays for dismissal of the appeal as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that since, the other party did not dispute the ownership of the appellant-plaintiff, but the fact remains that the appellant-plaintiff has failed to prove the ownership of the property and in the absence of the same, by mere concession of other side, the Court cannot settle and grant decree of partition by way of separate possession. The appellant has failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act, thus, the Court has left with no other option, but declined the relief.

It is matter of record that earlier, the respondent(s)-defendant(s) had also filed a suit claiming identical relief which was dismissed in default.

Be that as it may, but the fact remains that the appellant-plaintiff has failed to prove the ownership of the mother with regard to the property measuring 117 square yards of the land. The transfer of the property by way of an affidavit without registration or without assessing the area of the land cannot be looked into, even otherwise, the ownership of the mother Rattan Devi has not been disputed into, rightly so, the Courts below have not granted the relief.

Keeping in view the facts and circumstances of the case, I do not intend to differ with the findings rendered by the Courts below which are based upon appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal stands dismissed.

12.07.2016
yogesh

(AMIT RAWAL)
JUDGE