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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4344-2012 (O&M)
Date of decision : 08.08.2016

Bijender

... Appellant

Versus

Vidhya and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.L. Singla, Advocate
for the appellant.

None for respondent(s).

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-defendant No.3 is aggrieved of the concurrent findings of fact, whereby the suit at the instance of the respondents-plaintiffs No.1 and 2 has been decreed.

Mr. P.L. Singla, learned counsel appearing on behalf of the appellant-defendant No.3 submits that his client is a *bona fide* purchaser of a land as per the sale deed dated 09.07.2004 from Tej Pal-defendant No.2 as the property of Ram Swaroop, after his death, devolved upon Raju and Tej Pal. Mutation was effected on 29.03.2001. By applying the policy of “Buyer Beware”, he purchased the property noticing that there was no challenge to the mutation till the date of the sale deed. The sisters chose to file the aforementioned suit, whereby Tej Pal was impleaded as defendant No.2. He

filed the conceded written statement stating that he has no objection in case the suit is decreed. The mutation aforementioned was effected on the basis of the Will dated 23.02.2001 of Ram Swaroop, who stated to be died on 26.02.2001. An application in this regard for production of the original Will was moved by defendant No.2-Tej Pal, but its reply has not been filed nor the original Will was produced, whereas the other brother said that the original Will was of Tej Pal. The Courts below ought to have drawn the adverse inference. It is the case of an apparent fraud and collusion between the bothers and sisters, thus, urges this Court for formulation of the following substantial questions of law:-

1. Whether the non-contesting of the suit by the Tejpal was a result of an apparent fraud and collusion.
2. Whether the judgment and decree of the Courts below suffers from illegality and perversity.

As per record, respondents-plaintiffs No.1 and 2 are only the contesting respondents. Today there is no representation on behalf of them and even on 10.03.2016. The appeal of the year 2012 and accordingly, I proceed to decide the appeal on merits.

I have heard the learned counsel for the appellant-defendant No.3 and appraised the paper book and of the view that the Courts below formed the opinion that there was no presence of the daughters at the time of sanctioning of the mutation in respect of his estate of Ram Swaroop, *ibid* whereas the property was mutated in favour of only sons, as per the Will, aforementioned. The sale deed is dated 09.07.2004. The appellant-defendant No.3, in my view, is *bona fide* purchaser as he was not aware of the factum

of the non-availability of the original Will. The non-contest of the suit by Tej Pal, the vendor of the appellant, itself shows the apparent fraud and collusion upon the appellant-defendant No.3. After three years of the sale deed, the suit has been filed in the month of December 2004. Non-production of the original Will despite moving of the application, the Courts below ought to have drawn the adverse inference. It is a normal fact where the father leaves the property in the name of the sons where the daughters are married and settled in their matrimonial home as they have been taken care at the time of marriage. All these facts have not been noticed by both the Courts below.

For the foregoing reasons, the judgment and decree rendered by both the Courts below are not sustainable and accordingly, the same are set aside and the suit of the respondents-plaintiffs is dismissed. Substantial questions of law as noticed above are answered in favour of the appellant-defendant No.3.

Appeal stands allowed.

Decree sheet be prepared.

08.08.2016
yogesh

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No