

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1027 of 2016 (O&M)
Date of decision:03.03.2016

Hardip Singh and others

... Appellants

Vs.

Smt. Rani

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Vaibhav Narang, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of the judgment and decree dated 18.01.2016 rendered by the Lower Appellate Court, whereby, suit for possession at the instance of the respondent-plaintiff vis-a-vis suit property has been decreed by setting aside the judgment and decree of the trial Court.

Mr. Vaibhav Narang, learned counsel appearing on behalf of the appellant-defendants has raised multi-fold arguments which are enumerated herein below:-

1. In order to establish the claim of the possession, the respondent-plaintiff was to prove the title but only certified copies of the sale deed dated 25.06.1998 and power of attorney dated

26.05.1998 executed by the LRs of Bal Nath in favour of Satpal son of Ronki Ram, were brought on record, whereas, the appellant-defendants have acquired the ownership by virtue of sale deed dated 07.02.2008 executed by Krishna widow of Saudagar Nath and his son Rajnish Kumar.

2. He further submits that Bhag Mal was owner of the property and he has one son and three daughters. On his demise, the property devolved upon all his legal heirs. Whereas, Krishna wife of Saudagar Nath sold the entire property in favour of the appellant-defendants. The respondent-plaintiff failed to prove the execution of the sale deed and rightly so, the suit was dismissed. However, the Lower Appellate Court has committed illegality and perversity in setting aside the well reasoned judgment and decree of the trial Court by treating the certified copies of the sale deed and power of attorney to be public documents as per the provisions of Section 74 (2) of the Indian Evidence Act, which are not permissible in law. Section 74(2) of the Act reads thus:-

“(2) Public records kept [in any State] of private documents.”

In support of his aforementioned contentions, he relies upon the judgment of this Court in **Narinder Nath Kapoor vs. Prem Nath Khanna and others 2009(4) RCR (Civil) 515** and urges this Court to formulate the substantial questions of law.

I have heard learned counsel for the appellant-defendants and appraised the judgments and decrees of the Courts below and of

the view that there is no substance in the plea of Mr. Narang, for the reasons, that defendants have admitted the inheritance of the property owned by Bal Nath in favour of legal heirs, namely, Smt. Mohindro, Jinder, Indira Rani, Saudagar Nath. It has not been proved on record whether all sisters agreed to sell the property in favour of Saudagar Nath. It has not come on record that in what circumstances, the Krishna and her son had sold the entire property in favour of defendant, namely, Hardip Singh and others.

It is a matter of record that all the legal heirs had executed sale deed 25.06.1998 in favour of Saudagar, who, had sold the property to the defendants, vide sale deed dated 07.02.2008. Section 74(2) provides that public records kept in any state of private documents. Sale deeds executed between parties kept as private documents are admissible. In view of the aforementioned provisions of the Indian Evidence Act, the Lower Appellate Court has rightly held that respondent-plaintiff was owner of the property as the appellant-defendants have failed to prove the execution of the sale deed. Krishna acquired the entire share of other legal heirs, in essence, the property has already been sold by all the legal heirs in favour of defendant.

The ratio decidendi culled out in the aforementioned judgment, would not apply to the facts and circumstances of the present case as the vendor did not have any title.

In view of the aforementioned observations, I do not

intend to differ with the findings rendered by Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 03, 2016
savita