

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.379 of 2013 (O&M)

Date of Decision: October 04, 2016

Hawa Singh

...Appellant

Versus

Smt.Inder Kaur & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Jagdeep Singh, Advocate for
Mr.R.S.Mamli, Advocate,
for the appellant.

Mr.Ravinder Malik, Advocate,
for respondent No.1.

Mr.Ajay Ghanghas, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

CM No.1063-C of 2013

For the reasons mentioned in the application, which is supported by an affidavit, delay of 35 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.379 of 2013

Appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit for declaration that the sale deed bearing Vasika No.37 dated 12.4.2006 being illegal, null and void and not binding upon his rights and for possession by way of partition of half share of the plot/property measuring 237 sq.yards, has been dismissed by both the Courts below.

Mr.Jagdeep Singh Advocate for Mr.R.S.Mamli, learned counsel for the appellant-plaintiff submits that plaintiff had filed the suit on the premise that defendant No.2 had no right to transfer the property in favour of defendant No.1 as he was owner of the plot in dispute on the basis of the compromise dated 18.4.2006 to the extent of half share. No sale consideration was given by defendant No.1 to defendant No.2.

He further submits that defendant No.2 had appeared as DW-1 and in cross-examination stated that he had not given any written statement or any written evidence in the suit. The aforementioned fact ought to have been taken into consideration by the Courts below instead the suit should have been decreed. Both the Courts below have not considered the compromise, wherein it has been held that the matter qua possession was settled. The compromise was duly proved by leading direct and cogent evidence. Defendant No.1 cannot be bonafide purchaser for valuable consideration. The Courts below have further erred in not considering the fact that defendant No.1 has not stepped into the witness box and, thus, urges this Court for setting-aside the findings.

Per-contra, Mr.Ravinder Malik, learned counsel for respondent No.1 and Mr.Ajay Ghanghas Advocate for respondent No.2 submit that before buying the property, defendant No.1 had verified the ownership of defendant No.2. Even the alleged compromise indicated that defendant No.2 was owner of the property, in essence, the plaintiff has failed to prove the ownership of the property and in the absence of the same, the Courts below have rightly dismissed the suit. The concurrent findings cannot be interfered with unless and until there is a gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the

paper book and of the view that the appellant-plaintiff has miserably failed to discharge the onus with regard to the ownership of the property in dispute. In the absence of the same, he has no right/locus standi to challenge the sale deed. The compromise does not convey the title of the plaintiff. In fact, it shows the ownership of defendant No.2. Plaintiff is the nephew of defendant No.2. Non-appearance of the defendant would not help the plaintiff. Once the ownership and possession has been established, the suit ought to have been dismissed, which has been done.

For the foregoing reasons, I do not intend to differ with the concurrent findings, which are based on appreciation of oral and documentary evidence. No ground for interference is made out.

Appeal stands dismissed.

October 04, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No