

**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 1020 of 2015
Date of decision:16.02.2016**

Rameshwar Aggarwala

...Appellant(s)

Versus

Sunehri Devi thr. Her LR Narender Kumar
and ors

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Arihant Jain, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

Having failed before both the Courts below, the plaintiff has filed the present regular second appeal against the judgment and decree dated 24.09.2014 passed by Additional District Judge, Jind and judgment and decree dated 13.03.2013 passed by the Additional Civil Judge, (Senior Division), Jind.

The plaintiff filed suit for partition of house No. 72/6 situated in Gandhi Nagar, Improvement Trust, Scheme No. 6, Jind measuring 355.56 Sq. yards purchased vide sale deed no. 1504 dated 15.09.1995 as detailed in the head note of the plaint. The claim of the plaintiff is that his father, Sri Ram Ji Lal was the

allottee of the suit land. Sale deed No. 1505 dated 15.09.1995 was executed in this regard by the Improvement Trust, Jind in favour of his father. The plaintiff being Class-I heir, was entitled to 1/5th share in the suit land.

Both the courts below declined the relief of partition on the ground that Ramji Lal, the father of the plaintiff, had already died much before the date of transfer of the plot in his name.

Section 5 of the Transfer of Property Act is reproduced as under:-

“5. “Transfer of property” defined.---In the following sections “transfer of property” Act means an act by which a living person conveys property in present or in future to one or more other living persons, or to himself, or to himself and one or more other living persons, and “to transfer property” is to perform such act.

In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.”

As per the provisions of Section 5 of the Transfer of Property Act, for a transfer to be valid, two living persons are

required. Sri RamJi Lal, the father of the plaintiff was not alive when the agreement was executed in the year 1980 and the sale deed was executed in the year 1995 and as such, the sale deed Ex. P-1 did not constitute a valid transfer of property under the law. The plaintiff being son of the said Ramji Lal cannot seek partition of the suit property. This Court finds itself in agreement with the observations made by both the Courts below. The learned Counsel for the appellant could not refer any provision of law by which this transfer can be said to be legal.

Dismissed in limine.

16.02.2016
SN

(JITENDRA CHAUHAN)
JUDGE