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

**RSA-4932-2013 (O&M)
Date of decision : 01.09.2016**

Piara Lal and others

... Appellants

Versus

Mohan Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Salar, Advocate
for the appellant.

Mr. Vikas Mehsempuri, Advocate
for respondent No.1.

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 is aggrieved of the decretal of the suit restraining them from alienating the suit land on the premise that in the revenue record, the property had been partitioned.

Mr. S.S. Salar, learned counsel appearing on behalf of the appellant submits that the appellant-defendant purchased the land in the year 1980. The partition proceedings effected in the year 1991 at his back. The appellant-defendant had been found to be in possession, but injunction has been granted on misreading and misconstrual of the documentary evidence. The respondent(s)-plaintiff(s) have failed to prove any material regarding the possession, much less, the fact that no effort was made to serve the defendant in the partition proceedings.

He further submits that the finding of the Courts below viz-a-viz the factum of the sale deed in favour of the appellant-defendant being non-est in law is not correct view as there is no challenge by way of counter claim or independent suit, thus, urges this Court for setting of the concurrent findings under challenge.

Mr. Vikas Mehsempuri, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that after purchase of the land vide aforementioned sale deed, the same was not reflected in revenue record and it is, in this backdrop of the matter, the petition seeking partition of the property was moved by taking into consideration the revenue record. If at all the appellant-defendant is aggrieved, he can seek the partition, but cannot alienate the property on the basis of the title. The appellant-defendant has failed to prove any document to show the possession, rightly so, has been enjoined, thus, urges this Court affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the finding of the Courts below viz-a-viz the factum of the sale deed in favour of the appellant-defendant being non-est in law is not correct view for there is no challenge by way of counter claim or independent suit. On the contrary, the appellant-defendant has failed to prove on record any document to show the possession, neither through direct, cogent evidence or corroborative evidence, whereas on the other hand, the respondent-plaintiff has been able to prove the possession. Since, he was having a threat, that on the basis of the sale deed, the appellant-defendant may alienate the property, the suit for injunction was filed. In

my view, the injunction granted is perfect, legal and justified. The appellant-defendant shall be at liberty to seek the partition of the property on the basis of the defence taken in the written statement. Dehors of the fact that the property though had earlier been partitioned, but it was in his absence.

For the foregoing reasons, the findings rendered by the Courts below qua the sale deed are hereby set aside and rest of the findings are affirmed.

With the aforesaid modification, the appeal is dismissed.

01.09.2016
yogesh

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No