

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4381 of 2015 (O&M)
Date of decision : March 28, 2016

Kuldip Raj and others

..... Appellants

Versus

Kailash Chander and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. D. Sharma, Advocate
for the appellants.

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 appellants-defendants are aggrieved of concurrent finding of fact whereby the suit for possession viz-a-viz suit property has been decreed. It is argued that status of parties is of co-parcener and not of licensee, therefore, the suit for possession was not maintainable, as the sale deed vide which the respondents-plaintiffs acquired title has not seen light of the day. Infact the property was purchased out of the funds provided by the father, though it was in the name of the mother but actually the owner was father. In essence, it was a benami transaction which is permissible, therefore the Benami Transactions (Prohibition) Act, 1988 would not come into way. The father filed the suit claiming ownership, which is stated to be pending, the

aforementioned facts are necessary for adjudication of the *lis*, thus, urges this Court to formulate substantial questions of law for adjudication by this Court.

I have heard learned counsel for the appellant and appraised the paper book and of the view that the appellants have admitted ownership of the respondents but failed to discharge the onus viz-a-viz benami transaction. Even father was not arrayed as defendant. Nothing prevented the appellants to summon him as a witness to show that the funds were provided by him for purchase of the house in question as well as construction. In the absence of the same, the respondents-plaintiffs were entitled to seek possession in accordance with law which has fallen to their share, by filing the suit aforementioned. In essence, the plaintiffs have discharged the onus in proving ownership, much less the possession. Both the courts below have concurrently held that the defendants have failed to prove the nature and character of the property being ancestral and co-parcenary and viz-a-viz respondents-plaintiffs to be owners.

The suit filed by the father is an independent proceeding as they are not part and parcel of the suit instituted by the respondent-wife.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

March 28 , 2016
archana