

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4590 of 2015 (O&M)
Date of Decision : 01.03.2016

Vinay Partap Singh

....Appellant

Versus

Jaswinder Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Senior Advocate
with Mr. Kanwarbir Sidhu, Advocate
for the appellant.

Surinder Gupta, J.

Plaintiff-Vinay Partap Singh (appellant) filed suit
seeking reliefs as follows:-

- (i) Declaration to the effect that he is exclusive owner in possession of SCF No. 13, Sector 19-D, Chandigarh, which he had purchased with his own funds and defendants no. 1 to 4 also recognized him as exclusive owner and have executed power of attorney in his favour;
- (ii) permanent injunction restraining defendants no. 1 to 4 from exercising rights of ownership over suit property;
- (iii) defendants no. 1 to 4 have no salable rights in suit property;
- (iv) sale deed dated 15.11.2006 executed by above defendants in favour of defendant no. 5 regarding un-partitioned 80% share in suit property is illegal, null and void; and

(v) in the event of defendants no. 1 to 4 are held to be co-owner of suit property, plaintiff has preferential right to purchase the same.

2. In later part of the judgment, parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. Plaintiff had sought above reliefs on the ground that suit property was purchased by him with his exclusive funds and defendants no. 1 to 4, who are his mother, sister, maternal uncle and maternal grandmother, have not spent a single penny for acquiring and possessing the same, as such, they have no right, title and interest in suit property despite the fact that allotment of property was made in joint names of plaintiff and defendants no. 1 to 4.

4. The above plea of plaintiff was discarded by the Court below as he failed to prove that money was exclusively spent by him from his own pocket while purchasing the suit property. The relief sought by plaintiff was also found barred under Section 4 of Benami Transaction (Prohibition) Act, 1988. Plaintiff had been admitting defendants no. 1 to 4 as co-owners for the last 12 years after its purchase, as such, plea of estoppel was applied against him while declining the relief that he is exclusive owner of suit property. Sale deed dated 15.11.2006, executed by defendants no. 1 to 4 in favour of defendant no. 5 was held to be a legal and valid document. The plea of plaintiff that he has got preferential right to purchase the suit property was also discarded and defendant no. 5 was held to be *bona fide* purchaser of suit property for valuable consideration.

5. Not satisfied, plaintiff preferred appeal, which was also dismissed by learned Additional District Judge, Chandigarh.

6. Learned counsel for the appellant has pressed two arguments in support of the case of plaintiff-appellant. Firstly, that he has got preferential right under Section 22 of Hindu Succession Act to purchase the suit property; and secondly, sale deed dated 15.11.2006 in favour of defendant no. 5, is illegal and bad being hit by the principle of *lis pendens*.

7. Firstly, I take the submission of learned counsel for the appellant about preferential right claimed by plaintiff to purchase the suit property. Section 22 of the Hindu Succession Act reads as follows:-

“22. Preferential right to acquire property in certain cases -

(1) *Where, after the commencement of this Act, interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolve upon to two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.*

(2) *The consideration for which any interest in the property of the deceased may be*

transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.”

8. A bare perusal of above provision shows that it relates to interest in immovable property of an intestate, where it has been inherited by one or more than one heir. In the present case, plaintiff and defendants no. 1 to 4 are original allottees of suit property, as such, no pre-emptory or preferential right is available to plaintiff. Argument of learned counsel for the appellant to this effect has no merit and is discarded.

9. Submission of learned counsel for the appellant that sale deed dated 15.11.2006 was executed during pendency of civil suit, as such, is hit by principle of *lis pendens* also has no merit. Plaintiff has not been successful in proving his claim. The outcome of litigation is against him, as such, mere fact that civil suit was pending when the sale deed was executed, in no

manner effect the legality and validity of sale deed dated 15.11.2006.

10. No other argument has been addressed by learned counsel for the appellant.

11. On perusal of judgments of both the Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

March 01, 2016
jk

(SURINDER GUPTA)
JUDGE