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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2043-2014 (O&M)
Date of decision : 23.05.2016

Surmukh Singh and another

... Appellants

Versus

Mohinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.S. Gulati, Advocate for
Mr. A.S. Sullar, 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)

CM-5000-C-2014

For the reasons stated in the application, delay of 111 days in filing the appeal is condoned.

CM stands disposed of.

RSA-2043-2014

The appellants-defendant Nos.3 and 4 are aggrieved of the judgment and decree, whereby the suit claiming declaration, separate possession and permanent injunction on the ground that the property at the hands of defendant No.1 being brother, was joint in ownership, has partly been decreed.

Mr. A.S. Gulati, Advocate for Mr. A.S. Sullar, learned counsel appearing on behalf of the appellants-defendant Nos.3 and 4 submits that in

pursuance of the agreement to sell dated 07.04.2005, defendant Nos.1 and 2 entered into agreement to sell in respect of the house, in dispute and the possession of the same was also given on 15.06.2005. The respondent(s)-plaintiff(s) has failed to prove the nature and character of the property as ancestral, but the lower Appellate Court observed that the defendant No.1 could not have entered into an agreement qua his share and therefore, the judgment and decree of the Courts below are liable to set aside as valuable right has accrued, thus, urges this Court to formulate the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that where, execution of the agreement to sell and having allegedly put into possession, does not confer any right or title. Even if the property had not been partitioned, the defendant(s) could have entered into agreement qua his share, but the fact remains that the defendant(s) has lost the right to seek specific performance of the same in accordance with law. Nothing prevented him to file counter-claim regarding specific performance and the Court would have had occasion to mould the relief qua share of the defendant(s).

For the foregoing reasons, I do not intend to differ with the impugned judgments and decrees which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

Resultantly, the appeal is dismissed.

23.05.2016
yogesh

(AMIT RAWAL)
JUDGE