

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5746 of 2015 (O&M)
Date of Decision : 04.04.2016

Chander Kanta

....Appellant

Versus

Bir Kanta @ Veer Kanta

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rohit Sharma, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal by defendant-Chander Kanta against the judgment and decree passed by Additional District Judge, Ludhiana whereby judgment and decree passed by learned Civil Judge (Junior Division), Ludhiana was affirmed with modification to the extent that plaintiff-Bir Kanta @ Veer Kanta is entitled to separate possession of her $\frac{1}{2}$ share in suit property bearing No. B.VI.190 (old) B.IX.17 (new), as fully defined in the site plan.

2. Case of plaintiff, in brief, is that as per sale deeds No. 1674 and 1675 dated 11.05.1983, suit property was jointly purchased in equal share by parties to suit. At the time of purchase of suit property a wooden partition wall was existing at point 'AB' and it was decided that as and when the property is to be divided a partition wall shall be raised at the same point. Relations of parties became strained and plaintiff requested the defendant to separate her $\frac{1}{2}$ share in the property by metes and bounds by raising a wall but the defendant refused to do so, hence this suit.

3. The defendant contested claim of plaintiff with the

averment that entire sale consideration for the purchase of suit property was paid by Gulshan Kumar Rawal, husband of the defendant from his personal funds. Name of plaintiff was inserted in the sale deed out of love and affection as a *benami* owner.

4. Both the contentions of defendant were not accepted by the Courts below while decreeing the suit of plaintiff.

5. Learned counsel for the appellant has argued that the Courts below have not taken into account admission of plaintiff that her husband had no income at the time of purchase of suit property. She is also not in possession of suit property. Plaintiff and defendant are the wives of two brothers; namely, Param Raj Rawal and Gulshan Kumar Rawal. As a token of respect and regard for his brother, husband of the defendant included the name of plaintiff in sale deed of suit property. It was a *benami* transaction and plaintiff had got no right, title or share in the suit property and this fact has not been taken into consideration by Courts below while decreeing the suit.

6. On perusal of judgments of both the Courts below I find no merits in the submissions of learned counsel for the appellant. The suit property was purchased vide two sale deeds in May, 1983. It was owned by Kashmiri Lal and Satpal in equal share, who sold the same to plaintiff and the defendant in equal share. The present suit was filed in the year 2002 and during 19 years after the sale neither the defendant nor Gulshan Kumar Rawal had challenged the sale deeds alleging that plaintiff is a *benami* owner of $\frac{1}{2}$ share of the suit property. It appears that

appellant is not sure of the plea she intended to take about title of plaintiff over suit property while she had taken the plea that name of plaintiff was incorporated out of love and affection and entire sale consideration was paid by her husband Gulshan Kumar Rawal, who while appearing as DW-2 had some other plea to put-forth and had stated that name of plaintiff-Bir Kanta @ Veer Kanta was incorporated in sale deeds by fraud committed by plaintiff and her husband. He admitted in cross-examination that he is not in possession of any document to show that funds for purchase of suit property were provided by him. DW-1 Sudesh Kumar Pahwa had admitted that plaintiff and defendant are owner of suit property in equal share. It was also proved on record that husbands of plaintiff and defendant alongwith their father were carrying on joint business in partnership which continued even in the year 1983. Taking into account all these facts and circumstances, learned Civil Judge (Junior Division) has rightly drawn conclusion that suit property was jointly owned by plaintiff and defendant and the plea of defendant that funds for purchase of suit property was provided by her husband, who got recorded the name of plaintiff in the sale deed out of love and regard for his brother, has no merit.

7. Learned counsel for the appellant could not point out any legal or factual infirmity in the judgments of both the Courts below while reaching the above conclusion or has been able to make out that any document on record was ignored or misread by the Courts below while concluding that plaintiff is owner to the extent of $\frac{1}{2}$ share in the suit property and is entitled to its

separate possession of her share by partition by metes and bounds.

8. No substantial question of law, requiring determination arises in this appeal, which has no merit.

Dismissed.

April 04, 2016
jk

(SURINDER GUPTA)
JUDGE