

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

**RSA No.4363 of 2014 (O&M)
Date of decision:25.07.2016**

Paramjit Kaur

... Appellant

Vs.

Arun Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Ankur Soni, Advocate
for the appellant.
Mr. Sandeep Bansal, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby, the suit for possession which had been decreed by the trial Court, has been dismissed on the ground that the remedy, if any, owing to the facts and circumstances and as well as, sale deed dated 15.04.2008, is to seek partition.

Mr. Ankur Soni, learned counsel appearing on behalf of the appellant-plaintiff submits that suit for possession in respect of disputed land was filed against the defendant in the year 2007 on the basis of the pleading that defendant had forcibly occupied the premises. The defendant had earlier instituted a suit clothing the status of tenant which was dismissed and he was held trespasser.

No doubt, during the pendency of the suit, in the year 2008, vide sale deed dated 15.04.2008, defendant had purchased 1/4th share and plaintiff is owner of 3/4th share. The purchase of the land by the defendant would be hit by doctrine akin to lis pendens. In support of his aforementioned contention, he relies upon the judgment rendered by the Hon'ble Supreme Court in **K.N.Aswathnarayana Setty (D) Through LRs and others vs. State of Karnataka and others 2014(1) R.C.R.(Civil) 533** to contend that a transferee pendente is bound by the decree as assuming himself to be party of the suit and thus, urges this Court to formulate the substantial question of law arises for adjudication of the present appeal as drawn in the memorandum of appeal.

Mr. Sandeep Bansal, learned counsel appearing on behalf of the respondent-defendant submits that the ratio decidendi culled out by the Hon'ble Supreme Court in **K.N.Aswathnarayana Setty's case (supra)** would not apply to the present case as there was no decree at the time of purchase of the property as the suit was instituted in the year 2007. The trial Court did not notice this fact as the status of the defendant assumed the character of co-sharer and remedy was not for possession but to seek separate possession by way of partition.

No doubt, the appellant-plaintiff is owner of 3/4th share, vide sale deed dated 29.07.1992 and 02.05.1995. Owing to the aforementioned sale deed of 2008, defendant had become the owner of 1/4th share. There is no illegality and perversity in the judgment and decree rendered by the

Lower Appellate Court, much less, no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Soni, for, ratio decidendi culled out in paragraph 6 of the aforesaid judgment would not apply to the facts and circumstances of the present case as there was no decree at the time when the defendant purchased the property. The status of the defendant is of co-owner to the extent of 1/4th share. Nothing prevented the appellant to seek amendment of the suit for seeking separate possession but he proceeded with the claim of possession on the premise that decree branding the defendant as trespasser had already been passed. In view of the prevailing situation, when the present suit was instituted, the subsequent event had taken place, i.e., sale deed dated 15.04.2008.

In view of the aforementioned observations, I am of the view that findings rendered by the Lower Appellate Court are perfect, legal and justified as per the settled proposition of law as there is no illegality and perversity, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 25, 2016

savita

Wheather speaking/reasoned

Yes/No

Whether Reportable

Yes/No