

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

RSA No.3720 of 2015 (O&M)
Date of decision : 25.07.2017

Harmanpreet Kaur

...Appellant

Versus

Malkiat Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Raj Kumar Kakkar, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff has filed the present Regular Second Appeal against the judgments and decrees passed by the Courts below.

The plaintiff had filed a suit for declaration asserting that the defendant No.1 who is co-sharer had sold more than her share in the land. The plaintiff rather than filing a suit for declaration that such sale deeds would not affect her right, chose to file a suit challenging the sale deeds executed by defendant No.1 in favour of remaining defendants.

The learned trial Court after finding that the parties are co-owners and even the vendees have become co-owner pursuant to the sale deeds, found that the suit filed by the plaintiff was mis-conceived and the remedy for the plaintiff was to file a partition proceedings. It has further been observed by the learned trial Court that if it is that the defendant

No.1 had sold more than her share, the last vendee would have to suffer in terms of Section 41 of the Transfer of Property Act. Liberty was given to the plaintiff to file an application for partition under the relevant provisions of law. Such judgment has been confirmed by the First Appellate Court also. However, while dismissing the suit, the Court has recorded a finding that the suit filed by the plaintiff is barred by limitation as the plaintiff has challenged the sale deeds which was executed more than three years prior to the institution of a suit.

The learned First Appellate Court after re-appreciating the evidence has recorded a finding which is extracted as under:-

“14. The case of the appellant is that the land measuring 150 kanals was their co-ownership to the extent of $\frac{1}{2}$ share each i.e. 75 kanals each but her mother sold excess share. The suit filed by the appellant/plaintiff is not maintainable as all the vendees including the defendants No.2 to 8 have become co sharers after the purchase of the land. It is a settled law that if a person purchases specific khasra number from any co-sharer, the sale deed will be deemed to be of the share and as such all the sale deeds executed by defendant No.1 will be deemed to be qua her share. In this way, all the defendants No.2 to 15 have become co sharers in the suit land along with the plaintiff. Admittedly a co sharer cannot transfer the land beyond his share in the joint holding. If he does so, the last vendee will have to suffer and the area sold in excess is to be deducted from the last vendee as per the provisions of Section 41 of the Transfer of Property Act.”

However, the learned First Appellate Court has also

committed a small error by holding that the challenge to the sale deeds is beyond time.

The plaintiff was not executant of the aforesaid sale deeds. The defendant No.1 had executed the sale deeds. Therefore, the plaintiff was not required to file a suit for declaration challenging the sale deeds. The plaintiff was not required to seek cancellation of the sale deeds in terms of Section 31 of the Specific Relief Act, 1963. The plaintiff was only required to seek declaration to the effect that such sale deeds would not adversely affect her rights.

Since the plaintiff was not required to challenge the sale deeds, therefore, the suit filed by the plaintiff cannot be held to be time barred with respect to challenge to the sale deeds. Therefore, the finding to that effect is set aside.

A reading of judgments passed by both the Courts below show that such right of the plaintiff has been protected. The plaintiff has been given right to seek partition which is the appropriate proceedings in such eventuality. It has further been observed that if it is found during partition proceedings that defendant No.1 had sold more than her share, it is the last vendee/vendees who would suffer.

Normally, I would have issue notice of motion and called upon other party but according to my opinion, once the substantive part of the judgment of the Courts below is correct and some observation which do not touch upon the merits of the case, recorded against the plaintiff, can be slightly modified without issuing notice to the other

party. However, the respondents are granted liberty to seek modification of the order if they feel aggrieved of the same.

Accordingly, the present Regular Second Appeal filed by the plaintiff is ordered to be dismissed.

25.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No