

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5141 of 2015 (O&M)

Date of Decision: 27.09.2017

Raj Kumar

... Appellant

Versus

Ram Pal and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pritam Singh Saini, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.(Oral)

CM No.12284-C of 2015

The delay of 26 days in filing the appeal is condoned for the reasons stated in the application which is duly supported by an affidavit.

The application stands disposed of.

Main Case

1. The father of the plaintiff Karta Ram was a defendant in the suit filed by the plaintiff and three of his brothers which was compromised by a decree with the father conceding the entire property in his hands to be shared in 1/5th shares with his four sons, one of whom is the appellant. The plaintiff filed suit for injunction restraining the defendants, his brothers, from interfering in his possession over the suit property. The dispute started when one of the brothers sold his land to the plaintiff vide a registered sale deed transferring 100 sq. yards to him. The plaintiff claimed exclusive

possession and ownership over these 100 sq. yards from out of the entire estate of Karta Ram in dispute and that the defendants should not interfere in his possession. The trial Court dismissed the suit and the appeal failed in the Court of the learned Additional District Judge, Kurukshetra on March 30, 2015 against which this appeal has been carried to this Court.

2. The sole argument raised by Mr. Saini is that the learned Additional District Judge, Kurukshetra erred in recording in the concluding part of the judgment while holding that the plaintiff is not entitled to relief of permanent injunction because the sale deed dated December 03, 1997 does not confer rights in favour of plaintiff with regard to land in excess of 67 sq. yards (1/5th share) then it has to be held that plaintiff has no cause of action and sufficient locus standi to file the suit and the same was not maintainable in the form presented. It is this part which has been questioned in the judgment. The fact of the matter is that the vendor brother could sell his share in the land but not in excess of his share. If his share was only 67 sq. yards as held by the trial Court on evidence on record then the excess land sold under the sale deed would have to be read confined to the share.

3. Mr. Saini's argument that the judgment and decree virtually sets aside the sale deed is incorrect. The sale deed holds good but subject to share and that is how the observations in para.20 of the judgment must be read. The challenge to the entire sale deed was misdirected. The suit had to fail because vendor had right to sell but no more than his share coming from the compromise decree under which even the plaintiff claims his rights.

4. Accordingly, I find no merit in this appeal and dismiss it with the above observations respecting para.20 of the judgment and how they

should be read.

(RAJIV NARAIN RAINA)
JUDGE

27.09.2017
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Whether speaking/reasoned Yes

Whether reportable No