

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA No.6374 of 2014 (O&M)

Date of decision: 28.09.2017

Harish Kumar

..... Appellant

Versus

Rakesh Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Harkesh Manuja, Advocate and
Mr. Sandeep Khunger, Advocate
for the appellant.

Mr. Sandeep Jasuja, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM-12025-C-2017

Application under Order 22 Rule 10 filed by the applicant on the ground that applicants have purchased the property through registered sale deed dated 15.01.2008. Since the purchasers are not the party in the cross appeal, the purchasers are only permitted to assist this Court while deciding the appeal.

Application is disposed of.

Main Case

Defendant-appellant is in regular second appeal against the concurrent finding of fact arrived at by the Courts below. In my considered opinion, following substantial questions of law arises in the present case:-

Whether the memorandum of family settlement is required to be registered under the Registration Act, 1908?

Originally, the suit property belongs to one late Sh. Krishan Lal. He had left behind three sons namely, Naresh Kumar, Rakesh Kumar, Dinesh Kumar, three daughters namely, Sunita Rani, Shoba Rani, Kiran Bala and widow Smt. Rup Rani. After the death of Krishan Lal, parties reduced into writing a memorandum of family settlement in the form of affidavit dated 13.02.2015. This affidavit was signed by all other children of late Sh. Krishan Lal except Naresh Kumar. The affidavit was attested by a notary public and also attested by Municipal Commissioner of the area. As per that affidavit, in a family settlement house in dispute was fallen to the share of Naresh Kumar and this writing was recognized and acknowledged of the aforesaid oral family settlement.

It is further in dispute that on the basis of this affidavit which is Ex. D-5 on the record, the Municipal Committee had transferred the property in the name of Naresh Kumar. Naresh Kumar had also sold the property through registered sale deed dated 11.07.2005 in favour of defendant No.1-Harish Kumar.

Rakesh Kumar etc. i.e. all executant of the affidavit Ex. D-5 dated 13.07.2005 filed present suit for declaration claiming that they are owners of the property after the death of Krishan Lal and therefore, the sale deed executed by Naresh Kumar is not binding on their rights.

Learned First Appellate Courts ignored this affidavit on the ground that it is not a registered document and therefore, transfer of property through unregistered document is not permissible.

It is very well settled that the joint hindu family can divide the property by entering into a family settlement orally also. In the present case, there was an oral family settlement which was acknowledged by an

affidavit which is Ex. D-5. It is clear in Ex. D-5 that family had entered into a family settlement and property in dispute had fallen to the share of Naresh Kumar. This document was not creating any right in the immovable property for the first time. No right has been created in the 'presentie'. Such document is not required to be registered.

In view of what has been laid down by the Hon'ble Supreme Court, the Courts would always lean in favour of upholding the family settlement rather than setting it aside. Plaintiffs have failed to prove in their evidence that Ex. D-5 was not executed by them. Municipal Commissioner Ashok Vats has appeared in the witness-box. He has a respectable person of the locality. No suggestion was given to him by the plaintiffs that this document was not attested by him or the plaintiffs had not signed this document. Defendants have further examined house tax Clerk as also the notary public, who has attested the affidavit.

In these circumstances, there was overwhelming evidence available on the file which prove genuineness of the aforesaid affidavit.

Learned counsel for the respondents has submitted that the sale deed between Naresh Kumar and Harish Kumar was without consideration. I have examined the copy of sale deed. The payment of sale consideration is through cheque. DW-4 Harish Kumar, the purchaser has appeared in the witness-box and stated that the payment was made through cheque which has not been disputed in the cross-examination. Still further, plaintiffs have no locus standi to challenge the sale deed on this ground. Sale deed is a contract between the seller and the purchaser. It is only the seller who can say that sale is void because of lack of consideration. In the present case, Naresh Kumar was a party defendant. Naresh Kumar never stated before

the Court that the sale is without consideration.

Next argument of learned counsel for the respondent is that only a photocopy of the affidavit Ex. D-5 was produced and the original was not produced. Although, this point has not been raised before the Courts below, however, with the help of counsel, I have seen that Ex. D-5 was exhibited on record without any objection. Trial Court has recorded a finding that this document was proved by leading secondary evidence.

Both the Courts have failed to examine the case in the proper perspective.

In view of what has been discussed above, questions of law framed is answered in favour of the appellants. Hence, the judgment and decree passed by the Courts below are set aside.

Regular Second Appeal is allowed.

28.09.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No