

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

RSA 4156/2017(O&M)
Date of decision:24.10.2017

Satish Kumar

.....Appellant

v.

Ashok Kumar

.....Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Vinay Kumar Gupta,Advocate for the appellant.

Jaswant Singh,J,(Oral).

Plaintiff/appellant is in appeal against the judgment of reversal dated 20.4.2017 passed by Additional District Judge, Moga whereby his suit for possession by way of partition was dismissed and the judgment and decree dated 20.4.2015 passed by Civil Judge (Sr.Div.)Moga decreeing the suit was reversed.

Heard learned counsel for the appellant.

As per case set up by the plaintiff, defendant his real brother was residing in the suit property, except the room on the terrace which was in possession of plaintiff and his articles lying locked in the said room. The suit property was earlier owned by their mother-Shanti Devi and defendant had sold the suit property to plaintiff through sale deed dated 22.4.2002. It was further averred that plaintiff and defendant had also purchased land measuring 8 marlas 6 sarsahi,gair mumkin land of Moga Jit Singh vide registered sale deed dated 2.3.2005. Defendant and plaintiff exchanged the land vide registered exchange deed dated 21.7.2008. Plaintiff gave away 1

Marla 5 Sarsahi to defendant out of the suit land and in exchange he had taken 4 marlas 3 sarsahi out of land measuring 8 marlas 6 sarsahi of Moga Jit Singh. After the said exchange plaintiff remained owner in joint possession of 4 sarsahi of the suit property. Since plaintiff did not want to have the property joint with the defendant, he asked defendant to hand over the separate possession of 4 sarsahi by partition of the suit property but he failed to do so hence the suit.

Upon notice, defendant filed written statement inter alia stating that Shanti Devi mother of the parties had executed a registered Will dated 12.6.1996 in favour of defendant. Property in question and other property which was exchanged as per the exchange deed dated 21.7.2008 had not been included and hence the present suit was not maintainable. It was further stated that at the time of filing of the suit Shanti Devi was alive but she had not been arrayed as a party. It was further stated that the suit property had already been partitioned and defendant was in possession of the suit property. Rest of the averments made in the plaint were denied.

The learned Appellate Court, after hearing counsel for the parties and perusing the material on record has noticed that it has come in the evidence of PW5 Hari Ram that plaintiff was residing in the new house and it was appellant/defendant alone who alongwith his family members is residing in the old house which measures 4 marlas only and that this house was exchanged for some other property and that in the said exchange, the defendant-appellant got the entire house, while the plaintiff got 4 marlas of area in Geeta Colony (total area 8 marlas earlier jointly owned by both the parties) where the plaintiff constructed his separate house. It was further admitted by the said witness that defendant became exclusive owner in

possession of the house in dispute. It was further noticed that value of both the properties involved in exchange was assessed at Rs.3 lacs each in respect of the entire properties and not a part thereof and that defendant became exclusive owner in possession of the house in dispute and even the exchange deed Ex.PC contains a specific recital to the effect that as a result of exchange, nothing remains by way of shortfall or otherwise and that the parties have entered into possession of the property which have come into their possession and admittedly the appellant defendant is now in possession of entire suit property which too lend corroboration to the fact that the entire share of the plaintiff was intended and was actually given in exchange to the defendant. While holding so, the learned Appellate Court has observed that trial court omitted to take into consideration these aspects which resulted in miscarriage of justice and that being so the plaintiff respondent could not be said or held to be owner of any part of the house in dispute so as to claim the relief of partition thereof by way of separate possession.

In view of the above, no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

24.10.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No