

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

206

RSA-1211-2013 (O&M)

Date of Decision : 23.02.2018

Umesh Kumar

..... Appellant

Versus

Sh. Ashok Kumar and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Surinder Mohan Sharma, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. Sanchit Punia, Advocate
for Mr. Sandeep Singh, Advocate
for respondents No.3 and 4.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the courts below dismissing a suit filed by the appellant with liberty to him to seek partition.

The case set up by the appellant was that 1 kanal 16 marlas of land was purchased by Ishwar Dass by sale deed dated 19.11.1990. He sold half share of the land to the appellant and his brother (who subsequently gifted the portion he had purchased to the appellant). Thereafter, Ishwar Dass sold the remaining half share of the property to one Gurdas and consequently he was left with no right, title or interest in the property. Notwithstanding that he sold the land again for the third time to the respondents No.3 and 4 vide sale deed dated 12.12.2000 which was a void transaction since, as mentioned above, Ishwar Singh had no right, title

on interest left in the property. It is noteworthy to mention here that

second purchaser Gurdas was never impleaded as a party nor was sale deed executed in his favour placed on record. The courts below held that though a prior vendee had a superior right yet since the appellant had not been able to prove that Ishwar Singh had no right, title or interest left in the property, his assertion that the sale deed in favour of respondents No.3 and 4 was bad could not be brought home. Had the appellant impleaded Gurdas or even placed on record the sale deed he may have been able to prove that after these two sale deeds Ishwar Singh had sold his entire property but in the absence of these facts, the courts below cannot be faulted for coming to the conclusion that the sale deed in favour of respondents No.3 and 4 could not be voided at the asking of the appellant. The courts further gave a right to the appellant to seek partition of the property in case he so desired.

Counsel for the appellant has not been able to show how these findings are incorrect.

In this view of the matter, appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

February 23, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No