

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1811 of 2013 (O&M)

Date of Decision: March 22, 2018

Narinder Singh

...Appellant

Versus

Harbans Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.J.S.Toor, Advocate,
for the appellant.

Mr.Gaurav Kalsi, Advocate for
Mr.H.S.Bath, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the judgment and decree dated 14.12.2012, whereby the appeal against the judgment and decree dated 14.6.2012 rendered by the trial Court, whereby the suit laying challenge to the exchange deed dated 3.6.1993 with consequential relief of possession, had been decreed in part. In essence, the exchange deed aforementioned has been held to be null and void.

Appellant-plaintiff instituted the suit challenging the aforementioned exchange deed dated 3.6.1993 executed by his father with the defendant on the ground that it required registration as it was recorded in writing.

Both the parties led evidence and ultimately the injunction suit filed against the respondent-defendant was dismissed. The appellant-

plaintiff preferred appeal and the Lower Appellate Court held the exchange deed dated 3.6.1993 to be null and void on the ground that the same was not compulsory registered as per Section 17 of the Indian Registration Act as it had value of more than ₹100/- and the parties were co-sharers. It could not have been exchange except for partition.

Mr.J.S.Toor, learned counsel representing appellant-plaintiff submitted that the Lower Appellate Court has not granted the consequential relief of possession and it was emphatically denied and as status-quo ante was required to be granted, therefore, there is illegality and perversity.

Mr.Gaurav Kalsi, Advocate for Mr.H.S.Batth, learned counsel representing the respondent-defendant submitted that the judgment and decree of the Lower Appellate Court is perfectly legal and justified as no appeal has been preferred by the defendant. In other words, the said judgment and decree has been accepted, but the relief as sought is not sustainable as remedy lied elsewhere.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Toor vis-a-vis granting of relief of possession, for, the parties to the suit admittedly and concededly are co-sharers. Consequential relief of possession could not have been granted unless and until a preliminary decree in a suit for separate possession is passed. A separate suit for partition by metes and bounds is required to be filed, which remedy was accepted one.

For the reasons stated above, I do not intend to grant consequential relief as submitted by Mr.Toor. With the aforementioned observations, the judgment and decree of the Lower Appellate Court is

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upheld and the appeal stands dismissed.

March 22, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No