

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

RSA No.2627 of 2016 (O&M)
Date of decision: 28.09.2018

Subhash Chander and others

..... Appellants

Versus

Neelam and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep K. Sharma, Advocate for the appellants.

Mr. Ravinder Hooda, Advocate for respondents No.1 and 2.

Mr. Rahul Makkar, Advocate for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court decreeing the suit for possession by way of partition and permanent injunction.

Undisputed facts are that Hans Raj, predecessor-in-interest of the parties i.e. plaintiffs No.1 and 2 and defendants No.1 to 5 was allotted two small portions of plots identified by Nos.11 and 12 barrack No.15, Gandhi Nagar, Rohtak. The plaintiffs being daughters of Som Nath son of Hans Raj claimed right in the property and therefore, have sought partition. On the other hand, it is the case of the defendants that after the death of Hans Raj and Som Nath, there was a family settlement between the parties and according to the aforesaid family settlement, property in dispute fell to the share of the defendants. It was further pleaded that this oral family settlement was acknowledged in the two affidavits dated 20.07.2012 duly executed by each of the plaintiff before Executing Magistrate, Rohtak.

Learned First Appellate Court has reversed the finding of the trial Court on the ground that the documents i.e. affidavits Ex. D-1 and D-2 cannot be instrument, for the purpose of transferring any right in the immovable property unless the documents are registered. Hence, the question which requires answer is whether an affidavit sworn in by a family member acknowledging an oral family settlement is an instrument of transfer of immovable property and therefore, requires registration.

On careful reading of the affidavits which are proved on file and admitted by the plaintiffs, it is apparent that these two daughters (plaintiffs) of Som Nath had sworn an affidavit each stating that they do not have any right in the property and they have no objection if in the municipal record, entry is corrected. In the considered opinion of this Court, such affidavit is not an instrument of transfer of the property. From the reading of aforesaid affidavits, execution whereof is admitted by the plaintiffs, the case set up by the defendants stands proved that there was a family settlement according to which the property in dispute had fallen to the share of defendant No.1. Accordingly, the question framed is answered in favour of the appellants.

Hence, the judgment and decree passed by the learned First Appellate Court is set aside. However, it is noted that learned counsel for the appellants has made a statement on instructions, from Naresh and Mukesh, appellants No.3 and 4, that since plaintiff No.2-Phoolawanti who has unfortunately become a widow is residing in the residential house and she would continue to reside without disturbance during her life time.

Regular second appeal is allowed.

(ANIL KSHETARPAL)
JUDGE

28.09.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No