

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA No.3318 of 2016 (O&M)

Date of decision: 09.07.2018

Prem @ Om Parkash

..... Appellant

Versus

Ram Sarup and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sachin Mittal, Advocate
for the appellant.

Mr. Namit Khurana, Advocate
for respondents No.2 and 3.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Dispute in the present case is with regard to 15 marlas land which is alleged to be part of passage comprised in rectangle No.23 Khasra No.13 and 18. It is the case of the plaintiffs that their grand-father sold the land measuring 42 kanals and 17 marlas to the defendant vide a registered sale deed dated 20.05.1958 and it was specifically stipulated in the aforesaid sale deed that the passage of two 'gatha' wide would continue to run through the land comprised in rectangle No.23 Khasra No.13 and 18. It is further case of the plaintiffs that their grand-father also sold some land to Hari Singh and in that sale deed also, it was stipulated that two 'gatha' wide land would be used as a passage so that the total passage comes to four 'gatha' wide. The plaintiffs pleaded that the defendant has dismantled the

aforesaid passage and taken the possession.

Defendant admitted the execution of the sale deed but submitted that after execution of the sale deed, it came to his notice that the land comprised in rectangle No.23 Khasra No.15 had already been sold to Hari Singh vide sale deed dated 14.01.1958. The defendant has further pleaded that a Panchayat was convened and it was mutually decided between the parties that the defendant would be further given land measuring 3 kanal 10 marlas out of the land comprised in rectangle No.24 Khasra No.15 and price of the remaining land shall be paid to the defendant. It is also admitted position on the record that on the basis of aforesaid settlement, another sale deed dated 16.12.1958 was executed in favour of the defendant.

The case of the defendant is that since the subsequent sale deed dated 16.12.1958 has been executed, therefore, the aforesaid sale deed supersedes the sale deed dated 20.05.1958 and hence, the passage as was provided in the sale deed dated 20.05.1958 came to an end. Both the Courts after careful examination of the registered sale deed dated 20.05.1958 and 16.12.1958 have recorded a finding that the passage as was provided under the sale deed dated 20.05.1958 has not been varied or altered.

Learned counsel for the appellant has submitted that since a subsequent contract was entered into, therefore, the original contract stood altered or varied. This Court has considered the submission. However, the subsequent sale deed admittedly is only with respect to the land measuring 3 kanals 10 marlas comprised in rectangle No.24 Khasra No.15. It is not even referring to passage comprised in rectangle No.23 Khasra No.13 and

18, therefore, there was no change, variation or alteration with regard to provision made in the first sale deed keeping the passage. Still further, the subsequent sale deed is not dealing with the entire land i.e. 42 kanals and 17 marlas. It is only dealing with the land measuring 3 kanals 10 marlas.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

09.07.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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