

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

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**RSA-3337-2016 (O&M)
Date of Decision : 25.09.2018**

Braham Parkash

..... Appellant

Versus

Ashok Kumar and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the concurrent judgments of the courts below dismissing a suit filed by the appellant.

The case of the appellant was that one Smt. Pyari – respondent No.3 was the owner of a large chunk of land. Out of that, she sold some land to the appellant and, for their use and convenience left 2 karam of land as rasta (which however was not part of the land sold to the appellant). Thereafter, by a supplementary sale deed sold 1/3rd of the share in the land to respondents No.1 and 2 which had been left as a rasta. The appellant filed the instant suit claiming that respondent No.3 had no right to sell the land left for rasta and also for permanent injunction restraining the respondents No.1 and 2 from using that rasta. Both the courts below held that Smt. Pyari- respondent No.3 had never transferred the left out land in favour of the appellant and consequently she continued to be the owner and thus had the right to sell 1/3rd of her share in that land and that is how this appeal has been filed.

Counsel for the appellant has argued that Smt. Pyari-respondent No.3 had left that land as a rasta and the appellant can not now be stopped from using it but the respondents No.1 and 2 are stopping them from using the same. It may be pointed out here that the suit filed by the appellant was not for an injunction restraining the respondents from stopping the appellant from using that rasta. The suit was filed for restraining the respondents from using that rasta which is totally a different kettle of fish. Once the appellant are not able to deny that the said land was never transferred in their favour then the conclusion is irresistible that Smt. Pyari – respondent No.3 continued to be the owner thereof and she had the right to sell the land to respondents No.1 and 2. The prayer now been made is completely beyond pleadings. Consequently, I find no fault with the findings of the courts below.

Appeal is dismissed. No costs.

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

September 25, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No