

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3349 of 2015 (O&M)

Date of decision:12.01.2018

Megh Raj and others

... Appellants

Vs.

Shanti Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shrey Goel, Advocate
for the appellants.

Mr. Kashish Garg, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Appellants-defendants No.1 to 3 are in Regular Second Appeal against the concurrent findings of facts and law, whereby, preliminary decree has been passed in a suit instituted by the plaintiff/respondent No.1, claiming the following relief:-

“Suit for separate possession by way of partition regarding 1/5th share of the plaintiff in shop measuring 7'6” x 58'6” bounded as under:-

East : Shop of Sadhu Ram Jagan Nath

West : Shop of Amrit Lal

North : Old Grain Market

South : Purshottam Lal.

Bearing Municipal unit No.B-VI-207/1 fully shown in green colour in the site plan annexed here located in old grain market, Goniana Mandi, upon which the defendants No.1 to 3 are in unauthorized possession.

Suit for permanent injunction restraining the defendants from alienating the suit property in any manner i.e sale, gifts, lease, mortgage etc. to any other person or raising any construction making any alteration therein without the consent of the plaintiff.”

Learned counsel for the appellant/defendants No.1 to 3 has brought to the notice of this Court that at the time of issuing notice of motion order dated 29.10.2015, it has been stated that the appellants had already purchased 4/5th share in the suit property, whereas, the respondent/plaintiffs are willing to buy the remaining piece of land.

Learned counsel for the plaintiff/respondent No.1 on instruction from his client submits that they are not willing to buy 1/5th share.

As regards the merit of the matter, learned counsel for the appellant/defendants No.1 to 3 submits that both the Court below have committed illegality and perversity in not noticing the fact that the appellants have purchased the property in dilapidated condition in the year 2001, vide sale deed dated 18.09.2001 and the suit seeking partition of the shop in question was filed on 15.12.2010. During all this period, there was no dispute amongst the co-owners. The Courts below have not noticed the

fact that the plaintiff-Shanti Devi had lost her alleged share through relinquishment and waiver by her own act and conduct as the sale deed aforementioned, was never challenged. On purchase of the property, the appellants have raised the new construction by spending more than ₹5.00 lacs. It is only thereafter, she became greedy. All these factors were required to be weighed in the mind of the Courts below while adjudicating the lis between the parties and thus, urges this Court for setting aside the findings rendered by the Courts below.

Learned counsel for the plaintiff/respondent No.1 submits that share of respondent No.1, in the aforementioned property had not been disputed. The question of relinquishment does not arise as the appellant/defendants No.1 to 3 have become the owners of the property to the extent of 1/4th share. As per the law of partition, the co-owners do not keep the jointness of the property, the remedy is to seek partition which has been done in the present case, thus, urges this Court for dismissal of the regular second appeal as no question of law arises for adjudication of the matter.

I have heard learned counsel for the parties, appraised the judgments of the Courts below and of the view that there is no force and merit in the submissions of Mr. Goel, Advocate.

Once the share of the plaintiff/respondent No.1, has not been disputed, the sale deed, 18.09.2001 is pertaining to 4/5th share. The plaintiff had purchased the property and she had 1/5th share. If the appellants are not

able to succeed, the remedy for one of the co-owners, is to seek partition which has actually been resorted to. The question of right does not arise at all and the restraint order is also by creating third party rights is in correct perspective as it would lead to multifariousness of litigation.

I do not intend to differ with the findings rendered by both the Courts below, much less no substantial question of law arise for adjudication of the present appeal.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 12, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No