

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

119

RSA-887-2016 (O & M)
Date of Decision:29.08.2018

Mohinder Singh

...Appellant

Versus

Bhajan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None.

ANIL KSHETARPAL, J.(Oral)

In this case, learned counsel for the appellant has not appeared for the last two dates of hearing i.e. on 10.04.2017 and 28.08.2018. Even before that, the case was adjourned on the request of learned counsel for the appellant on 03.05.2016, 16.08.2016 and 07.11.2016. Hence, this Court is left with no choice but to read and decide.

Defendant No.3-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court decreeing the suit filed by the plaintiff for declaration that they are owners in possession of the property which was purchased by them through registered sale deeds dated 06.04.2004 and 25.10.2004.

Plaintiffs had also challenged ex parte judgment and decree passed at their back with regard to specific performance of the agreement to sell dated 24.04.2007 and pursuant thereto sale deed executed on 05.10.2009.

Learned First Appellate Court after appreciating the evidence have found that the judgment and decree dated 24.04.2007 is collusive. It

has been noticed by the Court that the judgment was obtained by defendant No.3 by playing fraud upon the Court in connivance with defendants No.1 and 2. The Court noticed that the sale deeds have been executed and once sale deeds are executed, it is to the knowledge of each or every villager, however, still plaintiffs were not impleaded as party defendants in the previous suit. The Court further found that the agreement to sell dated 12.02.2001 is suspicious, as original date of execution and registration of sale deed was 08.03.2002, which was extended to 11.12.2002, although entire sale consideration stood paid. The Court has further noticed that no reason has come on record as to why defendants No.1 and 2 failed to execute the sale deed in favour of defendant No.3 on 08.03.2002 when entire sale consideration stood paid.

This Court has also gone through the grounds of appeal. The question of law which have been proposed are as under:-

“(i) Whether, specific numbers in land can be sold by a co-sharer in an un-partitioned land?

(ii) Whether, possession of specific numbers in land can be given by a co-sharer in un-partitioned land?

(iii) Whether appellate court justified in holding subsequent buyer of property as necessary party in suit for specific performance filed by Appellant?

(iv) Whether the Appellate Court justified in setting aside findings of the civil court in suit for declaration, of which it was neither executing court nor having appellate jurisdiction?

(v) Whether the appellate court was justified in

ignoring the prior date of execution of agreement to sale between parties as the same was proved through marginal witnesses but not through scribe?

(vi) Whether the evidence and documents of the Appellant/defendant have been completely misread and misconstrued, which resulted into perverse findings?”

It is apparent that none of the question of law as proposed in the grounds of appeal is a substantial question of law. Still further, from the reading of the grounds of appeal, it is apparent that the appellant has failed to point out any perversity or non reading or misreading of evidence by the learned First Appellate Court.

In view thereof, there is no ground to interfere.

Regular second appeal is dismissed.

All pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

29.08.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No