

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

RSA No.1346 of 2018 (O&M)

Date of decision : 12.10.2018

Ashok Bhatnagar

...Appellant

Versus

Purnima and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Sanjiv Kumar Aggarwal, Advocate for the appellant.

Mr. Deepak Thapar, Advocate for the respondents.

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**ANIL KSHETARPAL, J. (ORAL)**

Defendant No.3-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Plaintiff-respondent No.1 who is class-1 heir has filed this suit for partition claiming that she has 1/4<sup>th</sup> share in the property and, therefore, entitled to seek partition.

The defendants contested the suit and pleaded that in fact 25% share of the property owned by the plaintiff-respondent No.1 had been transferred in favour of defendant No.3-appellant vide affidavit dated 21.05.2012.

Both the Courts after appreciating the evidence have found that the affidavit cannot be an instrument of transfer of immovable property worth more than ₹100/-. Still further, it is not in dispute that the aforesaid affidavit was withdrawn by the plaintiff after sometime before it could be acted upon.

Learned counsel for the appellant has submitted that the plaintiff is estopped from disputing the ownership of defendant No.3-appellant, once, she has given this affidavit.

In the considered view of this Court, the affidavit cannot be treated as an instrument of transfer of immovable property worth more than ₹100/-. Any instrument of immovable property worth more than ₹100/- is required to be compulsorily registered under Section 17 of The Registration Act, 1908. The Rule of estoppel cannot be applied to take away the immovable property.

Learned counsel for the appellant has further pointed out that instead of passing of preliminary decree, the Courts have passed a final decree.

Learned counsel for the respondents has fairly admitted that there is an error in the decree passed by the Courts below.

Keeping in view the aforesaid facts while upholding the judgment and decree passed by the Courts below, the decree passed is modified and it shall be treated as a preliminary decree. The plaintiff shall be entitled to move an application for passing a final decree.

Regular Second Appeal is dismissed.

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

**12.10.2018**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**