

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3781 of 2018 (O&M)

Date of decision: 17.09.2018

Kusum Lata (deceased) through her LRs

..... Appellant

Versus

Kalawati and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.P. Chahar, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM-9693-C-2018

Application is allowed and the delay is condoned.

Main Case

Defendant No.1-appellant through her legal heirs is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Lachi Ram and Rameshwar were joint owners of the property measuring 124 square yards. After the death of Lachi Ram and Rameshwar, their widows became owner of the property. It is the case of the plaintiff who is widow of Lachi Ram that there was partition and southern portion fell to share of the plaintiff where she built two shops and northern portion of the property measuring 70 sq. yards fell to the share of Murti Devi, widow of Rameshwar. It is further pleaded case of the plaintiff that Murti Devi along with her son sold 70 sq. yards through the sale deed dated

16.06.1996 for a sum of Rs.17,500/- and hence, Murti Devi was not left with any right, title or interest in the property. It was further pleaded case of the plaintiff that subsequent sale deed executed by Murti Devi in favour of defendant No.1 dated 26.06.2008 is not binding on her rights. The defendant contested the suit. The defendant claimed that she is a bona fide purchaser of plot measuring 55 sq. yards having covered area of 298 sq. feet. Defendant No.2 took a stand that the plaintiff is neither owner of the property nor in possession.

Both the Courts on appreciation of evidence have found that the electric connection of the shops in question is in the name of the plaintiff. The plaintiff has also examined Joginder, purchaser of the property who had purchased the property from son of Murti Devi. The Court further noticed that the joint ownership of Lachi Ram and Rameshwar is not specifically denied. Thus, the learned trial Court decreed the suit. The finding of the learned trial Court has been affirmed by re-appreciating the evidence.

Learned counsel for the appellant submitted that in fact the sale in favour of Joginder is an unregistered sale deed and therefore, no title passes. He submitted that the partition between the two owners is not proved.

This Court has considered the submission. As regards sale in favour of Joginder, the same is not subject matter of challenge in the present suit. As regards partition, it has come in evidence that both the parties separated. The area measuring 54 sq. yards fell to the share of the plaintiff whereas the remaining 70 sq. yards fell to the share of the defendant Murti Devi. It is the case of the plaintiff that she constructed two

shops and she got installed electricity connection therein which has been found to be correct. In such circumstances, the Courts have drawn an inference of partition of the property between the co-owners which does not appear to be incorrect.

Although, learned counsel for the appellant tried to persuade this Court to take a different view, however, keeping in view that learned counsel could not point out any perversity or misreading or non-reading of evidence by the Courts below, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

17.09.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No