

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

RSA No. 466 of 2017(O&M)

Date of decision: 19.4.2018

Dalbir Singh and others

....Appellants

VERSUS

Nirmal Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. D.S. Sandhu, Advocate for the appellants.

REKHA MITTAL, J.(Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the respondent/plaintiff Nirmal Kumar for declaration that he is exclusive owner and in possession of property i.e. land measuring 20 kanal 12 marlas detailed in un-numbered para 1 of the judgment of the trial Court on the basis of sale deed bearing No.13922 dated 24.12.2012 executed by Prithvi Singh – defendant No.4 was decreed by the trial Court and judgment and decree passed by the trial Court were affirmed in appeal by the Additional District Judge, Hisar.

Counsel for the appellants has sought to assail judgments of the Courts primarily on two counts. The first submission made by counsel is that as the suit land was the Joint Hindu Family Co-parcenary Property in the hands of Sh. Prithvi Singh, father of appellants Dalbir Singh and Mukesh Kumar and husband of appellant Smt. Vidya Devi, Prithvi Singh

was not competent to enter into an agreement of sale in favour of the

respondent/plaintiff or execute sale deed dated 24.12.2012 without any requirement of alienating the property for legal necessity or benefit of estate.

Another submission made by counsel is that as the appellants are still in possession of the suit land, plea of the respondent/plaintiff with regard to his being in possession of the suit land has been wrongly allowed by the Courts. In addition, it is argued that Sh. Prithvi Singh executed a General Power of Attorney in favour of his wife Smt. Vidya Devi and on the basis of said power of attorney, Vidya Devi executed release deed dated 18.12.2012 in favour of Dalbir Singh and Mukesh Kumar, sons of Vidya Devi and Prithvi Singh.

I have heard counsel for the appellants, perused the paper-book particularly the judgments passed by the Courts.

Counsel for the appellants, in response to a query raised by the Court, has fairly informed that the appellants failed to substantiate their plea that suit land was Joint Hindu Family Co-parcenary Property in the hands of Sh. Prithvi Singh or appellants No.1 and 2 were co-parceners and got a right in the said land by way of birth. This apart, the appellants did not challenge the judgment and decree passed in the suit filed by the respondent seeking specific performance of agreement of sale on the basis whereof, Prithvi Singh executed the sale deed in favour of the respondent/plaintiff on 24.12.2012.

So far as the plea that Prithvi Singh was left with no right, title or interest in the suit property after release deed dated 18.12.2012 had been executed by Smt. Vidya Devi in favour of Dalbir Singh and Mukesh Kumar, Courts have rightly held that any such power of attorney purported to be executed by Prithvi Singh or release deed executed by Smt. Vidya

Devi are hit by the principle of *lis pendens* as these documents came into existence during pendency of the earlier suit filed by respondent/plaintiff Nirmal Kumar seeking specific performance of agreement of sale executed by Prithvi Singh.

The plea of the appellants that they are in possession of the suit land does not get substantiated from any materials on record in order to say that judgments passed by the Courts suffer from perversity or question of possession is required to be determined by notice to the contesting party.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

APRIL 19, 2018

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no