

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4653 of 2018(O&M)

Date of Decision:9.8.2018

Bhupender Singh

---Appellant

vs.

Smt. Vidya Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. S.S.Antal, Advocate and
Mr. Devender Arya, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the respondents-plaintiffs for partition of joint land has been decreed to the effect that Smt. Vidya Devi and Sheobai Devi, daughters of Smt. Suraj Kaur are entitled to share to the extent of 1/4th share each, defendants No. 1 to 3 to 1/12th share each and defendants No. 4 and 5 to 1/8th share each of the suit land. Further, defendants No. 1 to 6 are restrained from raising any kind of construction and changing nature of suit land till final partition of land by metes and bounds. The appeal preferred by unsuccessful defendant No. 6 did not find favour with the appellate court of Additional District Judge, Narnaul whereby findings recorded by the trial court were affirmed without any variance.

The sole submission made by counsel for the appellant is that the appellant is owner in possession of share of defendant No. 4 Smt.Parmeshwari Devi widow of Gogdan by virtue of agreement to sell dated 28.9.2011 for sale consideration of Rs. 3,50,000/-. The courts have rejected claim of the appellant on the premise that the agreement to sell does not confer any title upon the appellant. The same does not have specific description and reference to the suit property. The agreement of sale Ex. DW2/A is not a registered document, therefore, cannot be used to protect possession over immovable property, if delivered under the agreement. The appellant has right to step into the shoes of his vendor on the basis of agreement to sell after partition, by acquiring title subsequent thereto.

Counsel for the appellant has failed to point out any materials on record that Smt. Parmeshwari Devi was the exclusive owner of the land, subject matter of the suit or she was co-owner to the extent more than 1/4th share in the suit land. As per the settled position in law, no one can acquire a better title than his/her vendor has. The Courts have rightly held that agreement to sell is not a document of title nor the appellant can claim to protect his possession on the basis of agreement to sell which is not a registered document, therefore, he cannot press to protect his possession by invoking Section 53-A of the Transfer of Property Act. In this view of the matter, I do not find an error much less perversity in the judgments passed by the Courts, when otherwise no question of law has been raised for determination in the regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly

dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

9.8.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No