IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6479 of 2017
Date of Decision.03.05.2018

Raj Kumar ...Appellant

Vs

Surender Kumar (now deceased) through LRs and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Deepa Jain, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-defendant is in regular second appeal against the concurrent finding of fact whereby the suit of the respondent-plaintiff seeking possession of the suit property by way of partition with consequential relief of permanent injunction has been decreed by the trial Court and affirmed by the lower Appellate Court.

The respondent-plaintiff instituted the aforementioned suit for claiming 1/5th share in respect of house No.2/901 (hereinafter called the "suit property").

In the written statement, defendant No.1-Raj Kumar came out with the plea that defendant No.1 to 4 and other co-sharers including the plaintiff had already agreed to sell their respective shares to defendant No.1 whereas the sale deed dated 15.01.2009 on behalf of respondent No.2 to 4 had been executed and sale consideration qua share of respondent-plaintiff to the tune of ₹2,50,000/- had been paid to him but he did not come forward for execution of the sale deed. In this regard, reliance had also been made to the undertaking Ex.DW-1/A.

Since both the parties were at variance, the trial Court framed as many as six issues. Both the parties led evidence in support of their pleaded case.

On the preponderance of evidence, the trial Court did not rely upon the undertaking Ex.DW-1/A and ordered for preliminary decree which has been upheld by the lower Appellate Court in appeal.

Ms. Deepa Jain, learned counsel appearing on behalf of the appellant-defendant submitted that Ex.P3 i.e. judgment and decree is dated 19.01.2007 and by that time the undertaking of January, 2009 had not come into existence, therefore, could not have been pleaded. No doubt, in the previous round of litigation, the Court below while rejecting the suit filed by the appellant for declaration and permanent injunction determining the share as $1/5^{th}$ but subsequent events had been pleaded in the written statement which were not appreciated in the correct perspective. The witness, DW1 proved the undertaking, much less, passing of the sale consideration. All these facts have not been appreciated by the Courts below, thus, there is infirmity and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Ms. Jain. The revenue record reflected the co-ownership of the respondent-plaintiff to the extent of $1/5^{th}$ share. Any co-sharer, who does not want to keep the property joint, can always seek partition by way of separate possession. That is what has been done in the aforementioned suit. The undertaking has not been believed by the Courts below for the reason that if at all, there was an undertaking, the same would have definitely been reflected in the revenue record, for, the suit aforementioned was filed on 25.08.2009. No sane person after making the payment of

₹2,50,000/- would sit idle and defend a suit instead of seeking correction in the revenue record.

In view of the aforementioned, the concurrent finding of fact arrived at by both the Courts below do not call for interference. The argument of Ms. Jain has not been able to cut ice to bring the finding of the Courts below within the realm of illegality and perversity. No ground for interference is made out. The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 03, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No