

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

RSA 3236 of 2018 (O&M)
Date of decision: 25.01.2019

Jaipal

.....Appellant

versus

Ravinder and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. N K Malhotra, Advocate
for the appellant

-.-

Rekha Mittal, J.(Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for partition, possession and injunction filed by Ravinder and Karan Singh was decreed by the trial Court on 06.10.2017 and appeal preferred by unsuccessful defendant No. 1/appellant came to be dismissed by the Additional District Judge, Rohtak vide judgment and decree dated 28.02.2018.

Respondents/plaintiffs staked their claim to the suit property namely plot measuring 230 square yards on the basis of sale deed dated 27.11.1980 executed in favour of plaintiff No. 2 and defendant to the extent of 2/3rd share and plaintiff no.1 and his brother Bijender to the extent of 1/3rd. Bijender Singh is stated to have passed away and has not left behind any other heir. It is further averred that plaintiff No. 2 and defendant were residing jointly and contributed equally in construction of house and decided that property would be partitioned in three equal shares but now the appellant/defendant is denying entitlement of the plaintiffs.

The appellant/defendant filed the written statement and raised

preliminary objections, noticed in para 2 of the judgment of the trial Court. On merits, it was averred that in the year 1980, the appellant/defendant retired from service and collected money from other sources for purchase of plot measuring 230 sq yards. Father of plaintiff No. 1 namely Om parkash and father of defendant No. 1 namely Rishal Singh made request for complete payment on the assurance that they will return the amount regarding their share but not a single penny has been returned. Another plea raised by the appellant is that as no money was paid qua share of plaintiffs, they agreed to relinquish their rights in suit property, therefore, cannot seek partition on the basis of sale deed dated 27.11.1980. He also filed counter claim that plot in question belongs to him and sale deed bearing No. 3682 dated 27.11.1980 may be declared as null and void.

Counsel for the appellant would urge that as entire sale consideration for purchase of suit plot was paid by the appellant/defendant and respondents/plaintiffs failed to discharge their obligation to pay the amount of their share, the respondents have wrongly been held entitle to seek partition on the basis of sale deed dated 27.11.1980. It is further argued that as the respondents did not contribute towards sale consideration of the property in question, the appellant is entitle to be declared as absolute owner thereof by declaring the sale deed to be null and void. In support of his contention, he has relied upon judgment of this Court **Krishan Kumar vs Sushil Kumar Mehta, 2015 (1) R.C.R. (Civil) 703.**

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned but find that the appeal sans merit and deserves outright rejection.

Assuming that entire sale consideration for purchase of plot

measuring 230 sq. yards vide sale deed dated 27.11.1980 was paid by the appellant/defendant on the alleged assurance made by Om Parkash, father of plaintiff No. 1 and Rishal Singh, father of plaintiff No. 2 as well as of the appellant, the appellant, at best, can take recourse to appropriate proceedings for recovery of sale consideration to the extent of share of the respondents in the suit property but the same can neither enure to benefit of the appellant to seek setting aside of the sale deed nor to assert his exclusive right in the suit plot. Examined from another angle, the appellant himself is the beneficiary under the sale deed and in case the sale deed is declared to be null and void, he would also be deprived of ownership right in the suit property even to the extent of share given under the sale deed. This apart, the appellant has not raised any such plea that the plot was purchased in *benami* names of the respondents/plaintiffs, therefore, it is not open for the appellant to raise any such issue in the second appeal nor can he derive any advantage to his contention from the judgment in *Krishan Kumar's* case (*supra*).

In view of what has been discussed hereinbefore, finding no merits, the appeal fails and is accordingly dismissed *in limine*. No order as to costs.

(Rekha Mittal)
Judge

25.01.2019
mohan bimbira