

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

**Regular Second Appeal No.5008 of 2018 (O&M)
Date of Decision: January 30, 2019.**

Sudesh Sood and another

.....APPELLANT(s).

VERSUS

Jitender Vij and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Gupta, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Plaintiff filed suit seeking decree for declaration to the effect that they along with defendant No.4 are owners in possession of dwelling unit bearing House No.1478/1 Sector 29-B, Chandigarh, claiming the said property to be joint Hindu family property.

It is admitted that this dwelling unit was applied and allotted by Chandigarh Housing Board in the name of Sharda Kohli (since deceased). Earlier defendant No.4 Naresh Kohli was living in this house and after the sale of the same to Kuldip Sharma, defendant No.5, he is living there.

Learned trial Court while looking into the plea of plaintiffs, observed that there is no presumption of a property being joint Hindu family property. The party which asserts, has to prove this fact by leading cogent and convincing evidence. It also took note of the fact that plaintiff

has nowhere pleaded that there was a joint Hindu family nucleus and joint family fund was used to purchase the property in the name of Sharda Kohli. The suit of the plaintiffs was dismissed and appeal filed by plaintiffs Sudesh Sood and Seema Anand was also dismissed by the first Appellate Court.

Learned counsel for the appellants-plaintiffs argues that allotment of the property in dispute was applied in the name of Sharda Kohli, who was unmarried at that time. Father of plaintiffs had died in the year 1966. Defendant No.4 brother of plaintiffs was living in house in question and the dispute arose after the death of Sharda Kohli, when the property was sold to Kuldip Sharma on 15.02.2006. As the property was applied in the name of Sharda Kohli, all the receipts of payment of instalments and allotment letter were issued in her name despite the fact that entire sale consideration was paid out of family earning. The defendants have not produced on record any evidence to prove that she was having any separate income to pay the instalments. This fact was not looked into by the Courts below while holding that the suit property is not joint Hindu family property.

The appellants-plaintiffs have challenged the title of Sharda Kohli with the plea that she was not exclusive owner of suit property, alleging it to be joint Hindu family property. The onus was on the plaintiff to prove this fact but no evidence in support of plea put forth by plaintiff has come on record. The receipts Ex.P2 to P29 produced on file regarding the payment of instalments are in the name of Sharda Kohli and do not advance the case of the plaintiffs in any manner. No evidence was produced on file to show that the parties were having any joint family fund out of

which payment of instalments of suit property were made.

Admittedly, defendant No.4 was living in this house and the possession was later on handed over to defendant No.5 Kuldip Sharma. Defendant No.4 Naresh Kohli brother of plaintiffs has not supported the plea of plaintiffs and it appears that even Prem Lata Sahni, plaintiff No.1 had felt satisfied after the judgment of trial Court and has not joined the remaining plaintiffs in filing the appeal before the first Appellate Court or this regular second appeal.

Learned counsel for the appellants could not point out any evidence produced on file to prove the plea of plaintiff that the suit property was purchased out of joint family fund, which has not been either looked into or has been misinterpreted by the Courts below. The findings of the Courts below that the appellants-plaintiffs have failed to prove that the suit property was purchased out of joint family fund, are based on evidence on record and call for no interference in this regular second appeal.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

January 30, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***