

RSA-2289-2018(O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-2289-2018(O&M)  
Date of decision: 20.01.2020

Kuldeep Singh

.....Appellant

Versus

Mukhtiar Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr.Amit Arora, Advocate for the appellant

**ANIL KSHETARPAL, J. (ORAL)**

**CM-6147-C-2018**

For the reasons stated in the application, delay of 60 days in re-filing is condoned. CM stands allowed.

**CM-6148-C-2018**

Allowed as prayed for.

**Main case**

Plaintiff-appellant is in Regular Second Appeal against concurrent finding of fact arrived at by the Courts below dismissing the suit filed by him seeking declaration that the plaintiff is co-owner to the extent of ½ share in the disputed property. The plaintiff had claimed that the property was owned by Smt. Kartar Kaur, his grandmother and therefore, he is entitled to declaration as prayed for. Defendants contested the suit and pleaded that Smt. Kartar Kaur had sold the property through her husband Sh. Gopal Singh vide registered sale deed

dated 26.2.1998 in favour of the defendants.

On appreciation of evidence, the Courts found that a previous suit filed by the brother of appellant was dismissed. The plaintiff has failed to prove that Smt. Kartar Kaur had died in the year 1997. The Court found that in fact the plea taken by the plaintiff is factually incorrect. Smt. Kartar Kaur died on 2.4.2004. Her death certificate is Ex.D-7. The Courts further recorded a finding that the present suit is barred under Order 2 Rule 2 CPC as plaintiff-appellant was also party to the previous litigation initiated by his brother.

This Court has heard learned counsel for the appellant at length and with his able assistance has gone through the judgments passed by the Courts below.

Learned counsel for the appellant submitted that the alleged General Power of Attorney executed by Smt. Kartar Kaur in favour of her husband-Gopal Singh has not been produced. He, hence, submits that the defendants have failed to prove valid sale deed in their favour.

This Court has considered the submissions, however, find no substance therein. The sale deed executed in favour of the defendants was registered on 26.2.1998. Plaintiff has never chosen to seek declaration that such sale deed executed by Smt. Kartar Kaur through her husband Gopal Singh-General Power of Attorney is illegal and liable to be ignored. On the basis of pleadings, following issues were framed:-

- “1) Whether the plaintiff is entitled for the relief of declaration as prayed for? OPP
- 2) Whether the plaintiff is entitled for the relief of

permanent injunction as prayed for? OPP

3) Whether the present suit is not maintainable?

OPD

4) Whether the plaintiff has not come to the Court with clean hands and conceal the material facts from this Court? OPD

5) Whether the plaintiff has no locus standi to file the present suit? OPD

6) Whether the suit is barred u/o 2 R 2 CPC? OPD

7) Whether the suit of the plaintiff is barred by the principal of res judicata? OPD

8) Relief.”

It is apparent from the reading of the aforesaid issues, that the validity and correctness of the sale deed was never questioned by the plaintiff.

Keeping in view the aforesaid facts, once the validity of the sale deed was never questioned by the plaintiff before the Courts below, this Court finds no substance in submission of the learned counsel for the appellant.

No ground to interfere is made out.

Hence, dismissed.

**20.01.2020**

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Whether speaking/reasoned

Whether Reportable

**(ANIL KSHETARPAL)**

**JUDGE**

Yes / No

Yes / No