

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.321 of 2018 (O&M)

Date of Order:24.02.2020.

Ram Avtar and others

..Appellants

Versus

Krishan Kumar and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jai Vir Yadav, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)
C.M.No.752-C-2018

For the reasons mentioned in the application, delay of 17 days in re-filing the appeal is condoned.

MAIN

Plaintiffs-appellants have filed the present regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit filed by them for declaration with consequential relief of permanent injunction and mandatory injunction.

Fundamental dispute between the parties is with respect to allotment of a plot under oustees quota.

As per the scheme framed by Haryana Urban Development Authority, applicable to allotment of un-partitioned (joint) land, all the co-owners are jointly entitled to apply for allotment of the plot. Plaintiffs as well as defendant no.1 were joint owners of unpartitioned land. Plaintiffs vide affidavit dated 23.04.2004, gave no objection, if Krishan Kumar applies for the allotment. Para 3 of the affidavit reads as under:-

“3. That we have no objection if Krishan Kumar son of Sh. Sullar is fully entitled to apply the residential plot against the above acquired land under the scheme of oustees quota.”

On the strength of this affidavit, Krishan Kumar applied for allotment under the oustee quota which was allotted to him. Now the plaintiffs claim that Krishan Kumar cannot be allotted plot under oustees quota alone because it was an unpartitioned land and they also have a right, title or interest in the plot allotted.

Both the courts after considering various aspects of the case have dismissed their suit.

This Court has heard learned counsel for the appellants and with his able assistance, gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellants has submitted that the affidavit was given only for facilitating application to be submitted by Krishan Kumar on behalf of all the co-sharers. He further submitted that relinquishment in the immovable property cannot be made through an un-registered document. He also drawn attention of the Court to subsequent communication by the Haryana Urban Development Authority calling upon the plaintiffs-appellants to give fresh No Objection Certificate.

This court has heard learned counsel for the appellants and critically analyzed his submissions.

The affidavit extracted above is categorical. A joint right was available to all the co-sharers in the khewat to make an application for allotment. Plaintiffs permitted defendant no.1 to apply. It is nowhere provided that such application shall be in the joint name or they all would be entitled to share in the plot, if any allotted. The policy only gives a right to apply. Once some of the co-sharers did not apply, they are not entitled to the allotment.

Still further, from the reading of the affidavit, it is clear that Krishan Kumar had only been given right to apply which in other words would mean that the remaining co-sharers had given up their rights to apply.

With regard to second argument, although, attractive in first blush, however, on deeper scrutiny found without substance. Right to apply is not a right in the immovable property. Right to apply is only an opportunity to apply for the allotment. Hence, affidavit dated 23.04.2004 is not relinquishment of right in the immovable property which shall require compulsory registration before it can be held admissible.

As regards last argument of learned counsel for the appellants that the Haryana Urban Development Authority also subsequently called upon the plaintiffs to submit fresh “No Objection Certificate”, it may be noticed that such communication is not supported by rules. Since, the plaintiffs did not apply for allotment, they are not left with any right to the allotment.

In view thereof, there is no ground to interfere.

Dismissed.

February 24, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No