

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

120

RSA-89-2021 (O&M)
Date of decision: 01.03.2021

KRISHAN KUMAR

...Appellant

Versus

SATBIR SINGH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Ms. Ashima Mor, Advocate for the appellant.

ANIL KSHETARPAL, J. (Oral)

Defendant No.2-appellant has filed regular second appeal against the concurrent findings of fact arrived at by the Courts below while decreeing a suit for possession by way of partition of the property. The dispute is with regard to a plot measuring 300 sq. yards on which a residential house has been constructed. The plaintiff claims that he purchased through sale deed dated 22.07.2011 from previous owner i.e. Surinder Kumar and hence, he is owner to the extent of 1/4th share in the plot. Respondent No.2-appellant on the other hand claims that he has inherited the property on the basis of Will of Smt. Kaushalya Devi which has been probated.

The learned trial Court, on appreciation of evidence, decreed the suit. The learned First Appellate Court after re-appreciating the evidence, dismissed the appeal.

It has come on record that the plot in dispute was originally owned by four co-owners namely Nanak Chand, Nevraj, Dharam Chand and Surinder Kumar. Nevraj died issueless and his share was inherited by Nanak

Chand. Thus, Nanak Chand became owner of 1/2th share whereas Dharam Chand and Surinder Kumar were owners of 1/4th share each. Nanak Chand and Dharam Chand transferred the property to their parents through sale deeds Exs.P2 and P3. In Civil Suit No.214 of 2009 *inter se* dispute between defendant No.1 and 2 was decided. Defendant No.2-appellant claims ownership over the share of Surinder Kumar (at that time minor). It is claimed that Surinder Kumar through his mother vide agreement to sell Ex.D1 had agreed to sell his 1/4th share on receipt of full payment to Surinder Kumar's parents. Both the Courts, as noticed above, have held that there cannot be transfer of title through the said agreement to sell. A transfer of title of property worth more than Rs.100 or upward takes place only through a registered instrument.

This Bench has heard the learned counsel for the appellant at length and with her able assistance perused the paper book.

Learned counsel vehemently contends that through agreement to sell, the alienation of the property was complete and since there is no challenge to the agreement, therefore, Surinder Kumar had no right to execute the sale deed on 22.07.2011 in favour of the plaintiff. She relies upon the judgment passed by the Hon'ble Supreme Court in **Murugan & ors. Vs Kesava Gounder (dead) thr. Lrs. and ors., AIR 2019 SC 2696.**

At this stage, it is important to note that the agreement to sell is defined under Section 54 of the Transfer of Property Act, 1882, which is extracted as under:-

“Sale” defined.—“Sale” is a transfer of ownership in

exchange for a price paid or promised or part-paid and part-promised. Sale how made.—3Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. 1In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

The first part of Section 54 deals with the sale i.e. transfer of ownership. Whereas second part deals with contract for sale or agreement to sell. It is apparent that the agreement to sell does not, of itself, create any interest in or charge on such property.

Hence, the argument of learned counsel that the alienation was complete due to the fact that there was an agreement to sell by Surinder Kumar's mother as guardian in favour of the parents of Surinder Kumar does have substance. Still further, admittedly Surinder Kumar was a minor at that time.

The judgment passed by the Hon'ble Supreme Court in **Murugan's case (supra)** has been carefully examined. It may be noticed that in para 6 the Court culled out the issues which required adjudication. Still further, in the case before the Supreme Court, a guardian of a minor had executed the sale deed. The Court held that since the alienation made by a guardian is voidable at the instance of minor or on his behalf, therefore, without challenging the alienation made, the relief of possession can not be claimed. In the present case, there is no sale deed by the minor in favour of

the plaintiff.

In the end, learned counsel for the appellant contends that the appellant is entitled to protect possession in view of Section 53-A of the Transfer of Property Act.

It may be noted here that the trial Court after appreciating the pleadings of the parties had framed the following issues:-

- i. Whether the plaintiff is a co-sharer in the suit property to the extent of $\frac{1}{4}$ portion? OPP
- ii. Whether the plaintiff is entitled to possession of his share by way of partition? OPP
- iii. Whether the plaintiff is entitled to permanent injunction restraining the defendants from raising construction over the suit property and from alienating the same more than their share? OPP
- iv. Whether the suit of the plaintiff is not maintainable in present form? OPD
- v. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
- vi. What relief.

Both the Courts decided the case on the basis of issues which were framed. The defendant never raised any issue on the basis of Section 53-A of the Transfer of Property Act which enables a prospective vendee to protect his possession on the basis of part performance. In absence of a plea having been raised before the Courts below, this Bench does not find it appropriate to entertain the same for the first time in regular second appeal.

Hence, no ground to interfere in the judgments passed by the Courts below is made out.

Dismissed.

01.03.2021

ashok

Whether speaking/reasoned:

Whether reportable:

(ANIL KSHETARPAL)
JUDGE

Yes / No

Yes / No