

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.9651 of 2018 (O&M)

Reserved on : 23.02.2023

Date of Decision : 14.03.2023

Yogeshwari

....Appellant

VERSUS

Dharampal Sharma and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhimanyu Singh, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the defendant-appellant against the judgments and decrees dated 09.03.2015 and 01.08.2018 passed by both the Courts below.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for partition of a residential house measuring 221 sq. yards fully described in the plaint. It was averred in the plaint that the suit property was purchased by the plaintiff-respondent No.1 and the defendant Naveen Chander Sharma (predecessor-in-interest of the defendant-appellant herein) jointly vide sale deed No.3143 dated 15.10.1999 registered in the office of Sub Registrar, Bhiwani. It was further averred in that the suit property has not been partitioned and was jointly possessed by the plaintiff-respondent No.1 and the defendant Naveen Chander Sharma. On notice the defendant-appellant took the stand that the sale deed was got executed by way of fraud and that the plaintiff-respondent No.1 had incorporated his name in the sale deed (Ex.P1) by playing fraud though the entire sale consideration was paid by the defendant Naveen Chander Sharma

and that infact the plaintiff-respondent No.1 had no connection with the suit property. As per the stand taken, the plaintiff-respondent No.1 had taken undue advantage of the relations between the parties.

On the basis of pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to the preliminary decree of the suit property as prayed for ? OPP
2. Whether the suit of plaintiff is not maintainable in the present form ? OPD
3. Relief.

Vide judgment and decree dated 09.03.2015 the Trial Court decreed the suit and passed a preliminary decree for partition. Aggrieved by the same, an appeal was preferred which was also dismissed vide judgment and decree dated 01.08.2018. Hence, the present regular second appeal.

Learned counsel for the defendant-appellant would contend that the plaintiff-respondent No.1 was not residing in the disputed property and further that the name of the plaintiff-respondent No.1 was got incorporated in the sale deed by way of fraud and misrepresentation. It has further been contended that the entire sale consideration was paid by Naveen Chander Sharma, the predecessor-in-interest of the defendant-appellant, and the plaintiff-respondent No.1 being a co-follower of Brahma Kumari Ashram got his name incorporated in the sale deed by playing a fraud upon Naveen Chander Sharma, the predecessor-in-interest of the defendant-appellant. Learned would further contend that the sale deed has not been proved as per law as the original sale deed was never produced in Court.

Heard.

In the present case both the Courts below have concurrently found that though it was a case set up by the defendant-appellant that a fraud had been played, however, the details of fraud were neither pleaded nor proved. There is not an iota of evidence to show that there was any fraud played by the plaintiff-respondent No.1 in getting his name incorporated in the sale deed (Ex.P1). It is rather held by both the Courts below that the plaintiff-respondent No.1 had proved the due execution of the sale deed (Ex.P1). PW2, Ravinder, Clerk of the office of Sub Registrar, Bhiwani brought the original record of registration of the sale deed in question and proved the sale deed (Ex.P1). The Deed Writer, Vinod Kumar, also stepped into the witness-box as PW3 and proved the entry in the register of the Deed Writer. In view of the absence of any evidence to show that any fraud was committed by the plaintiff-respondent No.1, the argument of learned counsel for the defendant-appellant that the name of the plaintiff-respondent No.1 was incorporated in the sale deed (Ex.P1) by way of fraud.

The argument of learned counsel for the defendant-appellant that the plaintiff-respondent No.1 never resided in the house in question also deserves to be rejected on the ground that it is not a pre-requisite that the person claiming partition should be physically residing in the house or the property of which partition was sought. The argument raised by learned counsel for the defendant-appellant that the sale deed (Ex.P1) was not proved as per law also deserves to be rejected on the ground that it has come in evidence that the original sale deed could not be produced in Court as the same had been impounded by the revenue authorities. PW4, Jagdish Chander, Clerk, DC Office, Bhiwani had appeared in the witness-box and

stated that vide order dated 07.03.2011 the Collector, Bhiwani had impounded the sale deed in question. Thereafter, an application for proving the sale deed by leading secondary evidence was allowed by the Trial Court vide order dated 16.04.2014. The plaintiff-respondent No.1 had examined PW2, Ravinder, Clerk who had brought the original record of registration of the sale deed (Ex.P1) and stated that the sale deed No.3143 dated 15.10.1999 was registered in the office and the same was correct as per the original record. PW3, Vinod Kumar, Deed Writer was also examined, who proved the entry in the register of his father as Ex.PW3/B and also identified the signatures of his father on the register. PW5, Rati Ram, Lumberdar, the attesting witness of the sale deed, also appeared and testified in favour of the plaintiff-respondent No.1.

In view of the above and in view of the concurrent findings of fact returned by both the Courts below, there is no ground to interfere in the present regular second appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

14.03.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO