

2024:PHHC:007267

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

CR-6805-2017 (O&M)
Date of decision: 18.01.2024

Suresh Chand Gupta

....Petitioner

Versus

Gauri Shankar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajinder Goel, Advocate for the petitioner

Mr. Sanjay Verma, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. In a suit for partition of the joint property, the parties entered into a settlement. According to the aforesaid settlement, respondent Gauri Shankar had to suffer a statement in another litigation which was pending between the parties. In the suit for partition of the property by metes and bounds, the court passed the preliminary decree in accordance with the aforesaid settlement. Sh.Gauri Shankar and Smt.Gayatri Devi, the respondents, filed an appeal before the First Appellate Court against the preliminary decree, which was disposed of. In the aforesaid appeal, the petitioner- Sh.Suresh Chand Gupta filed an application for recall of the order passed by the court on the basis of settlement. His grievance is that in the other civil suit, Sh.Gauri Shankar and Smt. Gayatri Devi have not entered into the corresponding settlement.

The First Appellate Court has held that such application is not maintainable before the First Appellate Court.

2. Learned counsel representing the petitioner submits that Section 119 of the Transfer of Property Act, 1882 provides relief to a party who suffers in a “transfer by exchange” due to a defect in the title of the transferor. According to Section 119, if any party to an exchange is deprived of the thing or any part of thing received by them in exchange, the person with defective title is liable to return the original property of other person and is also liable for the losses incurred due to such exchange.

3. This Court has considered the submissions made by the learned counsel representing the parties.

4. An application under Section 119 of the Transfer of Property Act,1882 was not maintainable before the First Appellate Court. It has also been specified by the First Appellate Court that remedy for the petitioner is to file an application before the same court or by a filing a separate suit.

5. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

6. Hence, dismissed accordingly.

7. All the pending miscellaneous applications, if any, are also disposed of.

18.01.2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No