

2024:PHHC:025597



112.

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

RSA No.5566 of 2018 (O&M)

Date of decision: 22.02.2024

Mange Lal

... Appellant

Versus

Om Prakash and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Anoop Kumar Yadav, Advocate, for the appellant.

GURBIR SINGH, J.

1. Present regular second appeal has been filed against the judgment and decree dated 10.05.2018 passed by learned Additional District Judge, Narnaul, whereby the appeal filed by the appellant-plaintiff against the judgment and decree dated 07.11.2016 passed by learned Civil Judge (Junior Division), Narnaul, dismissing the suit, has been dismissed.

2. The parties herein are being addressed as per their status before the trial Court.

2.1 In brief, the facts necessary for the disposal of present appeal are that the parties to the suit are real brothers. They were co-sharers of the land measuring 43 marlas (*gair mumkin*), as detailed in the plaint, situated in Village Kojinda, Tehsil Narnaul. Plaintiff was having 17/228 share in suit land whereas defendant No.1-Om Parkash was

having 1/4th share i.e. 11 marlas, and defendant No.2-Rohtash was having 3/20 share i.e. 6 marlas. The case of the plaintiff is that vide writing dated 27.03.2001, executed between the parties to the suit, he gave his residential property situated within *lal dora* to the defendants and the defendants in exchange gave their 2/3rd share in the suit land to the plaintiff, but the entries in the revenue record remained unchanged and same were liable to be corrected.

2.2 The defendants admitted that plaintiff and defendants are real brothers. The execution of writing dated 27.03.2001 was denied. It was contended that said writing is a fabricated document and no mutual settlement/exchange/partition took place between the parties. It has been pleaded that writing/agreement dated 16.11.2004 was executed between the parties and said writing was duly attested by a notary public. As per said writing, defendant No.1 was the owner in possession of 1/4th share of the suit property and defendant No.2 to the extent of 2/5th share of the suit property.

2.3 Issues were framed and the respective parties produced their evidence. After appreciating the evidence on record, the trial Court dismissed the suit and the appeal filed against thereof was also dismissed. Aggrieved, the appellant-plaintiff has approached this Court.

3. Learned counsel for the appellant-plaintiff has argued that Exchange Deed/writing dated 27.03.2001 Ex.P2 was duly proved. The plaintiff-appellant examined the scribe of said document, namely, Ghan

Shyam Verma as PW2. The plaintiff also examined Handwriting Expert Jasbir Singh Yadav as PW4, who compared the signatures on the writing Ex. P2 with the specimen signatures and gave the opinion that signatures on Ex.P2 were of Om Parkash. The suit property is known as Maanwala. It was so mentioned in the writing Ex.P2. Moreover, exchange took place between real brothers, so no necessity was felt to get the entries in the revenue record corrected. Even defendant No.2- Rohtash did not step into the witness-box to deny the execution of said document.

4. I have heard the submissions of learned counsel for the appellant and have gone through the case file.

5. Admittedly, the suit land is immovable property and its value is more than Rs.100/-. In the writing Ex.P2, it has been mentioned that sum of Rs.20,000/- was given for transferring the suit property. As per Section 17 of the Indian Registration Act, 1908 (for short, 'the Act'), any document creating right, title or interest in the immovable property of the value of Rs.100/- or more, is to be compulsorily registered. In the case in hand, the writing Ex.P2 is an unregistered document, so it does not create any right, title or interest in the immovable property in favour of the plaintiff. In the writing Ex.P2, it has been mentioned that the name of field is Maanwala, but in this regard, no documentary evidence was produced. The writing Ex.P2 is silent with regard to khewat, khatoni and khasra numbers which were given to the plaintiff, so said writing is a

vague document and identity of the property mentioned in Ex.P-2 is not established. Moreover, the plaintiff also failed to prove that he is in possession of alleged 2/3rd share of the defendants in the suit land.

6. The courts below have recorded concurrent findings of facts. There is neither any misreading nor mis-appreciation of evidence. No substantial question of law is involved in the present appeal. The same is without any merit and is dismissed accordingly.

7. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

February 22, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No