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**(1989) 07 P&H CK 0083**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Regular Second Appeal No. 1370 of 1987

Hardev Singh

APPELLANT

Vs

Harcharan Singh and Others

RESPONDENT

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**Date of Decision :** 21-07-1989

**Acts Referred:**

Registration Act, 1908 — Section 17

**Citation :** (1990) 97 PLR 435

**Hon'ble Judges :** J.V. Gupta, J

**Bench :** Single Bench

**Advocate :** Ashwani Chopra, for the Appellant; H.L. Sarin and Ashish Handa, for the Respondent

**Final Decision :** Allowed

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## Judgement

J.V. Gupta, J.—This is plaintiff's second appeal whose suit for possession through partition of 2/5th share of the property in dispute has been dismissed by both the Courts below.

2. The plaintiff filed the suit for joint possession alleging that the house, in dispute, was owned by him, his brother defendant No. 2 and their mother Rakhi, defendants Nos. 1, 9 and 10 and Smt. Iqbal Kaur, mother of defendants Nos. 3 to 8, to the extent of one-third share each on the basis of the conveyance deed dated September 2, 1960, copy, Exhibit P 3. Shrimati Rakhi died on April 20, 1980, leaving behind the plaintiff and the defendants as her legal representatives. The plaintiff had got one-fifth share out of the one-third share of the property owned by Shrimati Rakhi. Thus, the total share of the plaintiff in the suit property came to two-fifths and the remaining three-fifth share was owned by the defendants. Since the defendants are in possession of more area; hence the suit for partition. Out of ten-defendants only defendants Nos. 1 and 2 appeared whereas the remaining defendants were proceeded ex-parte. As regards defendant No. 2, he admitted the claim of the plaintiff in the written statement filed by him. Thus, the suit was contested by defendant No. 1

Harcharan Singh only. He denied that the suit property was owned by the plaintiff and their mother to the extent of one-third share, as alleged. He pleaded that he was allotted two different evacuee properties bearing Nos. 433-5-S-21 and 434-5-S-227 as shown red and green in the site plan filed by the defendant and that he had been paying the rent in respect of the same. According to him, the property shown in red colour bearing No. 433-5-S-227 had been in his sole and exclusive possession and was not transferred to Shrimati Rakhi or to any other person. As regards the property shown in the green colour though it was transferred in the name of Shrimati Rakhi as a purchaser from the rehabilitation authorities, yet it was illegal. He claimed that he had also got one-fifth share in the property bearing No. 434-5-S-227 shown in green colour. The trial Court negatived the plea of the defendants that the suit property consisted of two properties and found that it was one property. The said property though was transferred in favour of Shrimati Rakhi, the mother of the plaintiff and the respondents, yet since the conveyance deed was not registered, no valid title passed in her favour. In view of that finding the plaintiff's suit was dismissed. After the dismissal of the suit, the plaintiff got the said conveyance deed registered on April, 24, 1986. Consequently, they moved an application for additional evidence for bringing on record the said registered conveyance deed. That application was contested on behalf of the defendants. The learned Additional District Judge disallowed the said application. After the dismissal of the said application, the finding of the trial Court that since, Exhibit P. 3, the conveyance deed, was not registered, no valid title passed in favour of Shrimati Rakhi and others was affirmed. As a result, the decree of the trial Court dismissing the plaintiff's suit was maintained.

3. The learned counsel for the plaintiff-appellant submitted that since the conveyance deed was got registered on April 24, 1986, the same should have been brought on the record by way of additional evidence. According to the learned counsel, the approach of the lower appellate Court in this behalf was wholly wrong and misconceived. In any case, argued the learned counsel, in view of the judgment of this Court in *Hari Chand v. Chamba Ram* (1989-1) 95 P. L. R. 470 the conveyance deed did not require any registration and, therefore; the findings of the Courts below are liable to be set aside. The learned counsel further submitted that as regards the purchase of the suit property by Shrimati Rakhi, the defendant himself admitted the same in the written statement, but his plea was that there were two separate properties which plea has been negatived by both the Courts below. Thus, argued the learned counsel, the findings of the Courts below under issue No. 1 are liable to be set aside. The property, in dispute, being joint, and owned by the plaintiff and the defendants, the plaintiff was entitled to two-fifths share. On the other hand, the learned counsel for the respondent submitted that the document did require registration as the plaintiff himself got it registered later on after the dismissal of the suit. In any case even the original conveyance deed was not produced by the plaintiff and, therefore on that account also the plaintiff failed to prove any valid title to the suit property.

vide Exhibit P. 3 which was only a copy of the conveyance deed dated September 28, 1960.

4. After hearing the learned counsel for the parties, I find that in view of the judgment of this Court in Hari Chand's case (*supra*), the sale certificate issued by the Rehabilitation Department under the Displaced Persons (Compensation and Rehabilitation) Act, did not require any registration. Once it is so held, then the whole approach of the Courts below in this behalf was wrong and the finding arrived at are vitiated. As regards the original conveyance deed, the plaintiff produced P W 3, Jagrup Singh, Clerk of the Rehabilitation Department, who produced the original file containing the original deed. In view of that evidence, it could not be successfully argued that since the original was not produced by the plaintiff, no valid title passed in favour of Shrimati Rekhi. As observed earlier, this is the case of the defendant Harcharan Singh himself in paragraph 7 of the written statement *inter alia* as follows :-

"Only the property shown in green colour was purchased by Smt Ram Rakhi and on her death it vests in her legal heirs."

Since the plaintiff claimed these two properties to be Separate which plea has been negated by the Courts below, it is quite evident that it being one property, the same was purchased by Shrimati Rakhi as claimed by the plaintiff in view of the conveyance deed, copy, Exhibit P. 3. Thus, once it is so proved, then it is no more disputed that the plaintiff is entitled to two-fifths share in the suit property.

5. Consequently, this appeal succeeds and is allowed. The judgments and decrees of the two Courts below are set aside and a preliminary decree for possession through partition of two-fifths share of the suit property is passed in favour of the plaintiff and against the defendants. However, there will be no order as to costs.