

RSA No.3453 of 2009 (O&M)
RSA No.1132 of 2010 (O&M) and
RSA No.4867 of 2014 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.3453 of 2009 (O&M)

Dharampal

..... Appellant

Versus

Nathu Ram and others

..... Respondents

2. RSA No.1132 of 2010 (O&M)

Vinod Kumar and others

..... Appellants

Versus

Dharampal and others

..... Respondents

3. RSA No.4867 of 2014 (O&M)

Girdhar Gopal

..... Appellant

Versus

Vinod Kumar and others

..... Respondents

Date of Decision: 27.04.2015

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Madan Gupta, Advocate,
for the appellant in RSA No.3453 of 2009
and for R-1 in RSA No.1132 of 2010.

Mr. Alok Jain, Advocate,
for the appellants in RSA No.1132 of 2010
and for R-1 to R-5 in RSA No.3453 of 2009.

Mr. Pankaj Mehta, Advocate,
for Dr. Parveen Hans, Advocate,
for the appellant in RSA no.4867 of 2014,
for R-8 in RSA No.3453 of 2009
and for R-2 in RSA No.1132 of 2010.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This order disposes of RSA No.3453 of 2009 (O&M) titled *Dharampal vs. Nathu Ram and others*, RSA No.1132 of 2010 (O&M) titled *Vinod Kumar and others vs. Dharampal and others* & RSA No.4867 of 2014 (O&M) titled *Girdhar Gopal vs. Vinod Kumar and others* as common questions of law and fact are involved therein and the set of appeals can be disposed of by a common judgment. The facts are taken for convenience from RSA No.3453 of 2009.

Mr. Alok Jain, Advocate has veered his arguments to hang on the question whether the vendor Parmod Kumar was son of Om Parkash or Jai Chand. He submits that in the sale deed dated September 29, 1982 (Mark 'A') which was exhibited as a document on the statement of Mr. Jain's clients the vendee Parmod Kumar is recorded as the adopted son of Jai Chand son of Tokh Ram whereas in the subsequent sale deed Ex.P-1 dated July 06, 1993 the vendor is Parmod Kumar son of Om Parkash and this does not bring about any clarity in the judgment of the Lower Appellate Court which was led to a shorter path in doing justice on the three statements made before the Appellate Court whereby Mr. Jain's clients succumbed to agreeing to get the sale deed of 1982 exhibited on record, which means that the mode of proof is bypassed by acceptance of the document itself but not an admission of its contents.

Mr. Jain further disputes and Mr. Gupta agrees that there is some

factual error as to dimensions of the suit property as recorded in para.27 of the impugned judgment.

Mr. Gupta submits that his client asserts right to 1/4th share in 211.9 sq. yards lands which constitutes the corpus of the suit. Therefore, the dimensions mentioned in para.27 are required to be re-visited and re-examined by the lower appellate court on the basis of materials on record by suitably clarifying his order so as to remove all doubts and ambiguity.

Besides in para.26 the learned lower appellate court ventured to solve the entire problem and the disputes between the parties whether tenant Respondent-8 Girdhar Gopal seemed to be in possession of one of the disputed shops under the appellants, for proof of which fact the proceedings under Section 145 Cr.P.C. Between the parties were cited to remove doubts as to tenancy and therefore, the Court proceeded to draw its conclusions on the basis of the statements of the counsel for Mr. Jain's clients in the court *a quo*, whether the suit be treated as one for joint possession or physical possession. If such a statement was made by Respondent-1 before the first appellate court, I then see no reason why this Court in second appeal should tinker with what was said and done before the lower Court. However, since this Court is *prima facie* of the opinion that the matter deserves to be remanded to the First Appellate Court to make a report on the ambiguous areas left in a judgment mostly on account of the fact that a statement of far-reaching consequences was made before the Appellate Court in terms of written consents which rightly compelled the Court to act in a particular way, but on account of glaring ambiguity as to the dimensions of corpus

property together with what is the correct legal position with respect to the law on joint possession pressed by Mr. Jain in the judgments of this Court in **Arjan Singh and others vs. Hem Raj and others**, 1983 P.L.J. 56, **Pritam Singh vs. Tara Singh**, 1986 PLJ 177 & **M/s. Orient Craft Infrastructure Ltd. vs. Smt. Subhadra and others**, 2011(1) Civ CC 323 and the judgment of the Supreme Court in **Anathula Sudhakar vs. P.Buchi Reddy (Dead) By LRs & others**, 2008(2) RCR (Civil) 879, the matter is remitted to the Lower Appellate Court to re-examine the issues after hearing both the learned counsel but without taking any further evidence and to make accordingly a report to this Court.

At this stage, both the learned counsel are *ad idem* that instead of a seeking a report, there should be a full remand for a fresh decision on merits to remove ambiguities present in the first appeal court judgment. When parties agree to such course being adopted coupled with the fact that there is ambiguity in the judgment, for whatever reason, then interest of justice require that the matter should be decided afresh at the appeal stage. In venturing to do this, both the parties will remain bound by the three statements made before the Appeal Court on March 27, 2009, the photocopies of which are taken on record as Mark 'A' on the present file. A fresh decision is directed to be taken on merits in accordance with law as expeditiously as possible.

Records be sent back expeditiously.

The parties are directed to appear before the Lower Appellate Court on July 20, 2015.

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The appeals stand disposed of as above.

(RAJIV NARAIN RAINA)
JUDGE

27.04.2015
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