

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 4651 of 2014 (O&M)
Date of decision:- 02.03.2015

Nimral Jindia

...Appellant

Versus

Gurmeet Kaur and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Saurabh Arora, Legal Aid Counsel,
for the appellant.

RITU BAHRI J.

This regular second appeal is against the judgment and decree dated 24.03.2011 passed by learned Civil Judge (Jr. Divn.) Nabha and the judgment and decree dated 10.03.2014 passed by learned District Judge Fast Track Court, Patiala whereby the first appeal filed by the appellant/defendant has been dismissed by the lower Appellate Court.

Jaswant Singh filed a suit against the present appellant for separate possession by partition by metes and bounds of 5/12th share of the plaintiff-Jaswant Singh, in a building bounded on North: By Sadar Bazar and on the South: by the property of Sewa Singh and on the east: by property of Sewa Singh and on the West: by Gittu Baba Street, Nabha (earlier on called Ganga Ram Attar Street)

situated at Nabha.

Vide registered sale deed dated 06.04.1993, Jaswant Singh had purchased 5/12th share from the earlier co-sharer of the suit property as detailed in the head note of the plaint. The sale deed was registered with the Sub Registrar Nabha. The appellant claims to have purchased 7/12th share of the said property by means of registered sale deeds from the earlier co-sharers. The plaintiff and defendant were in possession of different parts of the suit property. On notice, appellant-defendant denied that plaintiff-Jaswant Singh had purchased 5/12th shares of the suit property by means of registered sale deed dated 06.04.1993 from the earlier co-sharer. She stated that she had purchased the remaining 7/12th shares of the property by means of registered sale deed and both the parties are not in possession of the suit property, rather Satrujeet Jindia is in possession of the entire property as a tenant of mortgagee. From the pleading of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to seek partition, if so, to what extent? OPP
2. Whether the suit property is in possession of Satrujeet Jindia as tenant of mortgagee? If so what is its effect? OPD

3. Whether the suit is properly valued for the purpose of Court fee? OPP

4. Relief.”

Plaintiff examined P.W.1 Mahesh Inder Sharma deed writer, P.W.2 Jatinder Shan, Draftsman, P.W.3 Sarabjit Singh. Thereafter, plaintiff closed the evidence. Thereafter, Sartujeet Jindia, husband and power of attorney of Nirmal Jindia appeared in the witness box as DW1 and examined Vijay Kumar, special power of attorney of Vinay Kapur, Pawan Kapur, Deepak Kapur as D.W.2 and after tendering certified copy of order dated 03.02.2003, defendant closed her evidence.

P.W.1 Mahesh Inder Sharma who has scribed the sale deed dated 06.04.1993 read over the contents of the sale deed and thumb marked it in token of correctness. P.W.2 Jatinder Shah proved the site plan of the building in question. PW3 Sarabjit Singh deposed regarding the registered sale deed dated 04.06.1993 vide which the plaintiff Jaswant Singh purchased 5/12th shares of the suit property. However, the plaintiff-appellant denied in her written statement that plaintiff had purchased 5/12th shares of the suit property by means of registered sale deed dated 06.04.1993. However, D.W.1 Shatrujeet Jindia in his affidavit Ex DW1/A tendered into his evidence i.e in his examination

in chief has admitted the sale deed dated 06.04.1993 Ex P-1 as he has deposed that that the factum of mortgage with possession is admitted by the plaintiff in the said sale deed dated 06.04.1993. In his cross examination, he admitted that 5/12 shares were purchased by the plaintiff. Defendant had placed on record a copy of the plaint of a suit filed by Vinay Kapur, Pawan Kapur and Deepak Kapur against Kishori Lal and others as Ex D6 wherein also sale deed dated 06.04.1993 executed in favour of Jaswant Singh is admitted and as such admittedly, the plaintiff has purchased 5/12 shares of the suit property. Much stress has been laid on the point that the plaintiff is not in possession of the suit property, so he cannot seek the partition of the suit land. The issue with regard to redeeming of the mortgage, is subject matter of decision in the trial Ex D6.

Vide judgment dated 24.03.2011, the trial Court after going through the entire evidence led by the parties, decided issue No. 1 and 3 in favour of plaintiff but no finding was given on issue No. 2, as plaintiff has filed a suit for separate possession by partition by metes and bounds. In this suit, only shares of the parties are to be determined. The suit of the plaintiff for his separate possession by metes and bounds of his 5/12th share shares in the building in dispute, is decree in his favour. It was made clear that this

judgment will have no effect on the mortgagees rights, which will be determined in Civil Suit No. 501 dated 08.12.1999 filed by the mortgagees and this judgment will be subject to decision of that case.

On appeal, the lower Appellate Court affirmed the judgment passed by the trial Court, vide judgment dated 10.03.2014. During the pendency of the appeal before the Additional District Judge, Fast Track Court, Patiala, copy of judgment and decree dated 24.12.2011 has been placed on record whereby the suit filed by Vinay Kapoor and others for declaration that they have become owners of the suit property on extinguishment of rights and title of owners, as they had filed to get the property redeemed, was dismissed. The mortgagors in the suit were Nirmal Jindia and Jaswant Singh. The plaintiffs had paid the entire amount and they were held owners of 5/12 share of the property in dispute as per sale deed (Ex P1).

After going through the entire facts of the present case, the defendants have admitted the execution of the sale deed dated 06.04.1993. The only defence was that the plaintiffs were not in possession of the separate portion in the plot. In the present case, only the preliminary decree had to be passed. The plaintiffs had filed a suit for possession for partition. The suit has been decreed with

regard to share i.e 5/12 in the suit property.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, R.S.A is dismissed

March, 02, 2015
G Arora

(RITU BAHRI)
JUDGE