

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

**1. RSA No.2532 of 1987
Date of Decision:26.05.2016**

Savitri Devi

.....Appellant

Vs

Kapoor Chand and others

.....Respondents

2. RSA No.374 of 1996

Savitri Devi

.....Appellant

Vs

Kapoor Chand and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. J.L. Malhotra, Advocate
for the appellant.

Mr. G.C. Bedi, Advocate
for respondent No.21.

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment, RSA No.2532 of 1987 titled as Savitri Devi Vs. Kapoor Chand and others and RSA No.374 of 1996 titled as Savitri Devi Vs. Kapoor Chand and others are being disposed of.

[2]. Facts are being taken collectively from both the appeals.

[3]. Kapoor Chand filed a suit for partition of land measuring 2 kanals, 2 marlas situated in village Pundri, the then Tehsil Kaithal, District Kaithal and claimed that the suit land was joint of the parties in which plaintiff had 18/92 shares.

[4]. Said suit was contested by defendants No.4, 10, 12, 14 and 15. Contesting defendants projected that the suit land was partitioned long ago amongst the co-sharers and owners were continuing in possession of their respective shares as owners. The suit land was shown joint in the revenue record only to incorporate the factum of ownership in favour of various owners.

[5]. Defendant No.4 Savitri Devi projected that she had purchased the property in her possession bounded with specific dimensions from one Sultan Singh vide registered sale deed dated 01.06.1977. Sultan Singh had purchased the said property from plaintiff-Kapoor Chand vide registered sale deed dated 22.04.1971. Savitri Devi also claimed that she was delivered possession of the land so purchased by her and the plaintiff was estopped from alleging that she had more share than the land shown in the revenue record because she had stepped into the shoes of her vendor Sultan Singh, who was transferee from the plaintiff himself. She alleged that she was in

exclusive possession of the property being owner and plaintiff had no right title or interest in the property so purchased by her.

[6]. She also pleaded that the plaintiff was in unauthorized possession of the part of the land for which she had already instituted a suit for possession which was statedly pending.

[7]. For the purpose of disposal of the present appeals, it has to be noted that in the civil suit filed by Kapoor Chand i.e. Civil Suit No.264 of 1987, after due contest, trial Court held that the entries in the *jamabandi* showing Smt. Savitri Devi-defendant No.4 as co-owner to the extent of 11 marlas of land was of no consequence in view of findings recorded by the trial Court. While passing preliminary decree, learned trial Court passed a decree in which share of Smt. Savitri Devi-defendant No.4 was treated to be equal to the property in her possession which was purchased by her with specific boundaries in the sale deed and further held that the shares of other co-owners in the remaining suit land was in consonance with the entries in the revenue record. Possession of Smt. Savitri Devi was protected inasmuch as that it was not to be disturbed at the time of drawing final decree. Trial court passed the preliminary decree vide judgment dated 22.05.1985.

[8]. Said judgment was assailed in Civil Appeal No.73/13 of 1985. The lower Appellate Court commented upon the land

purchased by the parties with reference to sale deeds Ex.DW6/A and Ex.DW5/A, vide which Sultan Singh purchased 11 marlas of land from Kapoor Chand (plaintiff) and thereafter Sultan Singh could not have transferred more than the area so purchased by him in favour of Savitri Devi as per sale deed Ex.DW5/A. The share of Sultan Singh was extended just to 11 marlas and the difference in two sale deeds could not have been treated to be inconsequential. The lower Appellate Court came to the conclusion that Savitri Devi had taken possession of the joint land, which was in excess of her due share. Accordingly, findings recorded by the trial Court in para No.20 of the judgment and under issues No.1, 1-A and 2 were modified to the extent that the entire suit land including area so purchased by Savitri Devi was held to be joint of the parties. The area of Savitri Devi-defendant No.4 was treated to be 11 marlas, which was equivalent to 22 shares. Share of plaintiff was held to be 7 ½ marlas which was equal to 15 shares. The shares of other defendants were also calculated in total 46 marlas i.e. 92 shares, which was equal to 2 kanals 6 marlas. Preliminary decree was accordingly modified by the Lower Appellate Court vide judgment dated 15.04.1987.

[9]. RSA No.2532 of 1987 has arisen out of the aforesaid proceedings. Aforesaid appeal was admitted on 29.04.1988 and

status quo regarding possession was ordered in favour of Savitri Devi. However proceedings for partition were ordered to be continued.

[10]. Pursuant to the preliminary decree passed in the suit, Field Kanungo, Kaithal was appointed as Local Commissioner on 15.04.1991 with the direction to carve out the scheme and modes of partition with the view to minimum disturbance of the possession of the parties. The report of Local Commissioner was received on 07.08.1991. Plaintiff raised no objection to the report of Local Commissioner. Local Commissioner was personally summoned and he made a statement that the land shown in the Eastern and Western side in the 'red' colour was a road *sare aam* and khasra No.593 was a well. However, Smt. Savitri Devi-defendant No.4 raised objection to the report and alleged that the report of the Local Commissioner was contrary to the judgment dated 15.04.1987 passed by the lower Appellate Court. Though the Local Commissioner was directed to suggest a scheme which would least disturb the possession of the parties, whereas Local Commissioner had disturbed the possession of defendant No.4-Smt. Savitri Devi. Smt. Savitri Devi had contended that the mode of partition was not justified and the same amounted to violate the order of the High Court vide which status quo regarding possession of Savitri Devi was

ordered.

[11]. Plaintiff contested the claim of defendant No.4. Trial Court rejected the objections of Smt. Savitri Devi by accepting the report of Local Commissioner on the ground that the scheme was drawn as per directions given by the lower Appellate Court in judgment dated 15.04.1987. The Local Commissioner had tried to carve out the scheme which would least disturb the possession of the parties. There was no order from the Court that the partition proceedings would not continue. Defendant No.4- Savitri Devi did not dispute the fact that her possession was disturbed of not more than 2 marlas. Defendant No.4 could not point out as to how the report was against the spirit of the order passed by the High Court in which proceedings for partition were ordered to continue. At the time of admission of RSA No.2532 of 1987, the High Court did not stay the final decree in accordance with the law. Since the proceedings were undertaken in accordance with law, therefore, the least disturbance of the possession was not construed to be in violation of the order of the High Court. Trial Court vide judgment dated 16.08.1991 accepted the report of Local Commissioner and the said was ordered to be made part of final decree.

[12]. Against the judgment dated 16.08.1991 passed by the

trial Court, defendant No.4-Savitri Devi went in appeal before the lower Appellate Court. Lower Appellate Court vide judgment and decree dated 20.11.1995 dismissed the appeal. That is how RSA No.374 of 1996 came to be filed in this Court.

[13]. Both the appeals have common source and are between the same parties. It would be relevant to note that the original Suit No.264 of 1997 was contested by defendants No.4, 10, 12, 14 and 15 i.e. Smt. Savitri Devi, Surta, Chatru, Molu and Lakhi.

[14]. During the pendency of the appeal, when the appeal was pending for service of respondents No.2 to 20, an application was filed by the appellant under Order 5 Rule 20 CPC read with Section 151 CPC on the averment that before the trial Court, suit was contested by Surta, Chatru, Molu and Lakhi besides the appellant Savitri Devi. Before the Appellate Court, Ram Sarup, Babu, Tara Chand, Randhir Singh, Joginder Singh, Salochana Devi and Kishni Devi put in appearance. Appellant claimed the addresses given in the memo of parties were correct and the respondents were evading service. The prayer for substituted service was moved by moving CM-1-C/CMA-1992. The said application was dismissed by the High Court vide order dated 29.09.1992.

[15]. During pendency of the appeal CM No.4217-C of 1996

was moved by Balbir Singh son of Telu Ram under Order 1 rule 10 CPC read with Section 151 CPC for impleading him as a party respondent in the appeal in RSA No.2632 of 1987. He contended that plaintiff Kapoor Chand filed a civil suit and preliminary decree was passed on 22.05.1985, wherein it was held that the share of Smt. Savitri Devi was equal to the property in her possession and her possession not to be disturbed at the time of drawing up the final decree.

[16]. The judgment of the trial Court was reversed by the lower Appellate Court vide judgment dated 15.04.1987, whereby modifications were made and the decree for partition was passed in respect of 2 kanals 6 marlas and share of Smt. Savitri Devi was shown as 11 marlas equal to 22nd shares, entitlement of plaintiff was shown to be 7 ½ marlas which was 15th shares besides showing entitlement of other defendants. Balbir Singh contended that Kapoor Chand-plaintiff had agreed to sell his remaining entitlement of 7 ½ marlas i.e. 15/92 shares in the suit land with him prior to filing of the suit for partition on 16.10.1979.

[17]. Balbir Singh filed a suit for specific performance against Kapoor Chand in respect of agreement dated 16.10.1979 and the suit was decreed on 01.10.1983. Sale deed in respect of 7 ½ marlas of land i.e. 15/92 shares was executed in favour of Balbir Singh on 20.01.1987 and he became absolute owner of

the land so purchased by him from Kapoor Chand. He also filed execution for possession of the land. In this manner, Kapoor Chand plaintiff had no interest in the suit land after execution of sale deed dated 20.01.1987 in favour of Balbir Singh. Balbir Singh claimed himself to be necessary party in the appeal and sought impleadment vide CM No.4217-C of 1996. He also moved CM No.5304-C of 1997 for placing on record photostat copy of the DDE No.8 dated 15.09.1997 Police Post, Pundri and CM No.5305-C of 1997 under Order 39 Rule 1 and 2 CPC seeking restraint order against the appellant.

[18]. All the civil miscellaneous applications came for disposal before the Court on 28.01.1998. Application under Order 1 Rule 10 CPC read with Section 151 CPC for impleading Balbir Singh was allowed and he was ordered to be impleaded as a party respondent in the appeal. Exemption was allowed for placing on record photostat copy of DDE No.8 dated 15.09.1997 Police Post, Pundri. Civil Miscellaneous No.5305-C of 1997 was disposed of on the basis of submissions made by the appellant that the appellant undertook to remove any construction raised on 11 marlas of land in case the same fell to the share of Balbir Singh. Appellant also undertook not to raise any construction on land measuring 1 marla adjacent to the land of Kapoor Chand towards the South. In view of undertaking given by the appellant

added respondent Balbir Singh had no objection in case the appellant raised any construction on 11 marlas of land as undertaken by the appellant.

[19]. During the course of hearing before this Court, both the learned counsel for the parties were *ad idem* that they are the only contesting parties in the appeal as respondent No.21 being vendee from the plaintiff Kapoor Chand is only the contesting party in the appeal and it was not necessary to serve other unserved respondents as original suit was contested by the limited defendants and that the execution of sale deed in favour of respondent No.4 by the plaintiff was the only controversy/lis remained *inter se* between the appellant and respondent No.1. On the basis of submissions made by both the counsel, this Court proceeded to decide these appeals on merit.

[20]. Though no substantial questions of law have been formulated by the appellant despite the fact that the case was adjourned on 11.10.2013 for this purpose. At a subsequent stage, this Court noted the factual position of the case in its order dated 18.02.2015, which reads as under:-

“Learned counsel for the respondent No.1 states that Balbir Singh son of Shri Telu Ram filed C.M. No.4217-C of 1996 under Order 1 Rule 10 CPC for impleading himself as party-respondent. The said application was

allowed by this Court on 28.01.1998. Thereafter, aforesaid Balbir Singh filed another CM No.5305-C of 1997 seeking restraint order against the appellant. In the said application, Balbir Singh stated that before filing of the suit for partition, Kapoor Chand had entered into an agreement to sell with him and he filed a suit for specific performance which was decreed on 01.10.1983 and the sale deed was also executed and thereafter applicant Balbir Singh became absolute owner of the suit property. In execution the possession was also statedly delivered in favour of said Balbir Singh. In para No.8 of the application, it was mentioned that plaintiff-Kapoor Chand died on 02.06.1997.

In view of aforesaid, presence of Mr. G.C. Bedi, Advocate, is necessary in the present case so as to defend interest of vendor/plaintiff Kapoor Chand and Balbir Singh.

Let intimation be given to the office of Mr. G.C. Bedi, Advocate regarding enlistment of this case for the adjourned date.

Adjourned to 04.03.2015.”

[21]. Having deliberated upon the attending facts and circumstances of the case, I found that the subject matter of RSA No.374 of 1996 titled as Savitri Devi Vs. Kapoor Chand and others was totally dependent upon the fate of RSA No.2532

of 1987 titled as Savitri Devi Vs. Kapoor Chand and others, because the entitlement of the parties as arising out of the preliminary and final decree could have been executed at a subsequent stage.

[22]. Apparently, Sultan Singh purchased 11 marlas of land from Kapoor Chand. Sultan Singh could have conferred only with the title in favour of Smt. Savitri Devi-defendant No.4. If Sultan Singh had sold the excess area to Savitri Devi as per sale deed Ex.DW5/A that could not have held to be inconsequential in terms of possessory right of Savitri Devi as observed in the preliminary decree dated 22.05.1985 passed by the trial Court. The incorporation made in the revenue record has to be in consonance with the title of the parties based on instruments of conveyance.

[23]. The preliminary decree as passed by the trial Court was lawfully modified by the lower Appellate Court by judgment dated 15.04.1987, wherein entitlement of all the parties were lawfully calculated in terms of area and shares. The area of Savitri Devi-defendant No.4 was calculated as 11 marlas equivalent to 22 shares. Share of plaintiff was calculated to be 7 ½ marlas which was 15 shares. The entire share of plaintiff was purchased by added respondent No.21 Balbir Singh who has contested the appeal. The course adopted by lower Appellate

Court cannot be termed as illegal or misreading of evidence on record. Savitri Devi could not have claimed land more than the entitlement of Sultan Singh. The vendor of Savitri Devi could not have conferred better title than the one held by him. Statedly, Sultan Singh was owner of 11 marlas of land which he could have lawfully conferred in favour of Savitri Devi-defendant No.4.

[24]. The objections raised by Savitri Devi to the report of Local Commissioner were lawfully explained inasmuch as that no disturbance of possession except area in excess of possession was the key factor between the parties and the same was taken out. There was no such objection on behalf of Savitri Devi that vacant land or the possession of other co-sharers had been given to her in lieu of 2 marlas allegedly taken out from her possession. There was no such objection that Savitri Devi was given land in lieu of 2 marlas of land taken out from her possession. Even whatever possession of the Savitri Devi was, not disturbed and the report of Local Commission in considered opinion of this Court was a lawful report and was the only solution to the on going controversy between the parties.

[25]. Therefore, I am of the considered view that no exception can be taken to the judgment and decree passed by the lower Appellate Court in RSA No.2532 of 1987. Since RSA No.374 of 1996 is the resultant effect of RSA No.2532 of 1987,

therefore, I do not find any substance worth consideration in the appeals and the same are accordingly dismissed.

26.05.2016
Prince

(RAJ MOHAN SINGH)
JUDGE