

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

**RSA No.3062 of 2014 (O&M)
Date of decision:02.08.2016**

M/s Ansal Crown Infrabuild Pvt. Ltd. ... Appellant

Vs.

Jai Narain and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Lokesh Sinhal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.7294-C-2014

Prayer in the application is for permission to file appeal as an assignee of defendants No.3 before the Court below.

For the reasons stated in the application, duly supported by an affidavit, the same is allowed and applicant/assignee of defendant No.3- M/s Anasal Crown Infrabuild Private Limited is allowed to file an appeal.

RSA No.3062 of 2014 (O&M)

Notice of motion.

Mr. Adarsh Jain, Advocate, who is present in Court, accepts notice on behalf of the respondents.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of appellant/defendant No.3 submits that he was impleaded as defendant No.3, vide order dated 28.02.2007. He further submits that vide sale deed dated

23.01.2001, defendant No.2, namely, Mani Ram son of Khajan sold the land measuring 1 kanal 12 marlas to the plaintiff. Though he did not have any title, yet sold the same very piece of land to defendant No.1-Ishwar Lal, vide sale deed dated 07.04.2003. It is in this background of the matter, the suit, aforementioned seeking declaration, consequential relief of injunction and alternative relief of possession was filed on 11.06.2003.

During the pendency of the suit, defendant No.1 - Ishwar Lal sold the land measuring 10 kanals 06 marlas including the piece of land measuring 01 kanlas 12 marlas to the appellant/defendant No.3, vide sale deed dated 15.05.2006. He further submits that the trial Court ought to have set aside the sale deed by subtracting 1 kanal 12 marlas out of 10 kanals 6 marlas. It was made in prayer clause 15-A of the plaint.

He further submits that though in the prayer clause, the plaintiff had only sought for setting aside of the sale deed qua his share, i.e., 1 kanal 12 marlas but yet the trial Court had set aside the entire sale deed with regard to 10 kanals 06 marlas whereas, after subtracting, it should have been 1 kanal 12 marlas and thus, the aforementioned judgment and decree was assailed but the Lower Appellate Court has also committed illegality in upholding the erroneous findings and thus, urges this Court for setting aside of the findings to the aforementioned limited extent only by framing the following substantial questions of law:-

“1 Whether the judgment and decree rendered by the trial Court and uphold by the Lower Appellate Court in setting aside the entire sale deed dated 15.05.2006 in respect of land

measuring 10 kanals 6 marlas is justified and legal?

2. Whether the judgment and decree of the trial Court suffers from illegality and perversity?

Mr. Adarsh Jain, learned counsel appearing on behalf of the respondents, on instructions from his clients and as well as by referring to the pleadings made in clause 15-A of the prayer clause, submits that his clients are not averse, in case, the sale deed in respect of balance area, i.e., after deducting 1 kanal 12 marla, which comes 8 kanals 14 marlas approximately out of total land measuring 7 kanals 10 marlas and the balance area, i.e., 8 kanals 14 marlas, be remain intact.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below.

It would be apt to reproduce the Clause 15-A, i.e., prayer clause of the plaint which reads thus:-

“(a) That a decree for declaration to the effect that the plaintiff is the owner in possession of the agriculture land bearing rect. No.9, killa no.8/2(7-0), 9/2(0-10), total measuring 7 kanals 10 marlas, to the extent of 32/150th share which comes to 1 kanal 12 marlas, situated within the revenue estate of village Pehladpur, Majra Badoli, Tehsil and District Faridabd may kindly be passed in favour of the plaintiff and against the defendants.

On going through the prayer clause, aforementioned, claim of the plaintiff before the trial Court was only with regard to setting aside of

the sale deed qua his share but not in respect of entire share. Mr. Adarsh Jain, on instructions from his clients, has very fairly stated at bar that he would not be averse for setting aside of the sale deed dated 15.05.2006 only qua 1 kanal 12 marlas.

In view of the aforementioned fact, I am of the view that judgment and decree of the trial Court is modified and the sale deed dated 15.05.2006 is declared null and void qua 1 kanal 12 marlas. However, regarding 8 kanals 14 marlas remain intact, in essence, the sale deed, aforementioned for 8 kanals 14 marlas is accordingly upheld. Since the respondents have already been held owners in possession and the trial Court did not grant any injunction. No further order is required to be passed in this regard.

Accordingly, the appeal is partly allowed to the aforementioned extent and the decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

August 02, 2016

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Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No