

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

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RSA No.878 of 2014 (O & M)
Date of Decision:28.11.2017

Sukhdev Singh

...Appellant

Versus

Satnam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goyal, Advocate
for the appellant.

Mr. Prateek Pandit, Advocate
for respondent Nos.1 and 2.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in regular second appeal against the concurrent findings of facts arrived at by the Courts below.

Plaintiffs had filed a suit for declaration claiming that they are owners in possession of land measuring 4 kanals 7 marlas out of land owned by late Chanan Singh-father of the defendants in addition to land measuring 16 kanals 9 marlas owned by the plaintiff out of the land as mentioned in the head note of the plaint.

It was a case of the plaintiff that Chanan Singh, who was owner of 4 kanals 7 marlas of land had sold the aforesaid land to Shri Bhajan Singh, Gian Singh and Mohan Singh sons of Gurdit Singh vide registered sale deed. It is further the case of the plaintiffs that their father Karam Singh had filed a suit for pre-emption, which was decreed on 13.08.1970.

Copy of the decree-sheet was produced on file. Decree-sheet reads as under:-

“This suit coming on this 13th day of August, 1970, for final disposal, before Shri Gurjit Singh Khurana P.C.S. Sub Judge Ist Class, Kapurthala, in the presence of the parties it is hereby ordered that as per the statements of the parties, the suit of the plaintiff for possession by presumption of the land in dispute is decreed on conditional payment of Rs.5820/- in all. The plaintiff shall pay the aforesaid amount less the amount already deposited, if any to the defendants or deposit for them in Court on or before 15.11.70, failing which his suit shall stand dismissed. Parties shall bear their own costs in either event. The plaintiff shall not be entitled to take actual possession of the suit land before 15.11.70 and will be entitled to take actual possession after that date alongwith standing crops, if any.”

Defendants before the Court are sons of Chanan Singh. It is the case of the defendants that Chanan Singh never sold the property nor there was any decree passed by the Court. Learned trial Court dismissed the suit on the ground that the decree dated 13.08.1970 was a conditional decree subject to payment of Rs.5,820/-, which has not been paid. The Court further held that proper parties have not been impleaded.

Before the learned First Appellate Court plaintiffs filed an application under Order 41 Rule 27 CPC to lead additional evidence alongwith the affidavit of Bhajan Singh, defendant in the suit for pre-emption, which was decreed on 13.08.1970 was filed. In the affidavit,

paid and, therefore, the condition as imposed in the decree dated 03.08.1970 has been complied with and possession was handed over.

However, the learned First Appellate Court rather than allowing an application for additional evidence totally misdirected itself. The Court rather than appreciating that such additional evidence would help the Court in adjudicating the dispute, choose to dismiss the application on the ground that such additional evidence appears to have been procured from Bhajan Singh to fill up the lacuna.

In the considered opinion of this Court, only material issue involved in the case is the condition as imposed in the decree dated 13.08.1970 stands complied with, the plaintiffs have become owners of the property.

Defendants, on the other hand, are sons of Chanan Singh. It is the case of defendants that Chanan Singh never sold the property, whereas the sale deed executed by Chanan Singh is apparent from the decree dated 13.08.1970. Chanan Singh is a party defendant in the suit. The legal heirs of Chanan Singh have no locus standi to take a different stand what Chanan Singh had pleaded in the previous suit, which resulted into decree dated 13.08.1970.

Taking into consideration the aforesaid facts, this Court is of the opinion that the order passed by the learned First Appellate Court refusing to allow the plaintiffs to lead additional evidence is wholly perverse. Courts have to adjudicate the dispute between the parties so that the parties are able to get justice. The Court overlooked the fact that such additional evidence would have helped the Court in adjudicating the dispute

In view thereof, the judgments passed by both the Courts are set aside and the application for additional evidence is allowed. Case is remanded back to the learned trial Court. Both the parties would be granted two effective opportunities to lead their evidence.

The learned trial Court shall re-decide the suit within a period of 6 months.

Hence, this regular second appeal is allowed.

Parties are directed to appear before the learned trial Court on 20.12.2017.

28.11.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No