

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

SAO No. 46 of 2014

Date of Decision: 02.12.2017

DARSHAN SINGH

-APPELLANT

VS

VINOD KUMAR AND ANOTHER

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. K.L. Kohli, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Defendant No.1 is in second appeal against the remand order dated 26.02.2014 passed by Additional District Judge, Jalandhar.

[2]. Plaintiff filed a suit for possession and permanent injunction in respect of the suit property which was originally owned and possessed by Gian Chand. Gian Chand died on 16.11.1975 leaving behind widow Motia Rani, sons namely Sham Kumar, Sanjiv Kumar and daughters namely Saroj Bala and Usha Rani. The legal representatives of Gian Chand inherited 185 square feet in the property in dispute.

[3]. As per the pleaded case, Motia Rani widow of Gian

Chand entered into agreement to sell with Vijay Kumar. She also executed Power of Attorney dated 04.09.2001. Being Power of Attorney, Vijay Kumar executed sale deed in favour of the plaintiff on 25.02.2002. On the basis of said sale deed, plaintiff claimed ownership and possessory right.

[4]. Plaintiff further pleaded that defendant No.1 allegedly purchased $\frac{1}{2}$ Marla from other legal representatives of deceased-Gian Chand and thereafter, defendant No.1 tried to merge the portion purchased by the plaintiff by way of encroachment.

[5]. Plaintiff further pleaded that on 21.05.2002, defendant No.1 took possession of the premises by breaking open the locks and took away the belongings. A complaint was filed before the police.

[6]. In the written statement filed by the defendants, the title of the plaintiff was denied. Defendant No.1 claimed that the property was sold by Raj Kumar and Joginder Kumar in favour of defendant No.1 vide sale deed dated 15.02.2002. On the strength of aforesaid sale deed, defendant No.1 became owner of the property.

[7]. The sale deed dated 25.02.2002 was claimed to be nullity as the sale deed dated 15.02.2002 came to be executed in prior point of time and the same was on the basis of status of

legatees in respect of registered Will dated 14.05.1996 executed by Pushpa Rani widow of Darshan Lal. Darshan Lal was pre-deceased son of Gian Chand.

[8]. Vide sale deed dated 17.04.1995, Pushpa Rani widow of Darshan Lal obtained the property. The case set up by the plaintiff was that only $\frac{1}{2}$ Marla of the house was sold to Pushpa Rani which ultimately went to Raj Kumar and then to defendant No.1. Remaining house was sold by the legal representatives of Gian Chand in favour of plaintiff vide sale deed dated 25.02.2002.

[9]. The trial Court dismissed the suit whereas the lower Appellate Court allowed the appeal by observing that during the trial proceedings, the plaintiff moved an application for adducing additional evidence to prove the conveyance deed and the site plan by summoning the concerned official from the office of District Managing Officer (Property), Jalandhar and to examine Motia Rani in order to remove any ambiguity.

[10]. Defendant no.1 had also moved an application for additional evidence to produce original conveyance deed dated 03.05.1966. The trial Court partly allowed the application filed by defendant No.1 on 12.10.2010 and dismissed the application filed by the plaintiff. The conveyance deed dated 03.05.1966 was on record but was not tendered into evidence. The lower

Appellate Court allowed the application for additional evidence of the plaintiff and the application for additional evidence filed by defendant No.1 for producing sale deed dated 11.04.1985 was dismissed.

[11]. The Lower Appellate Court while parting with the order remanded the case to the trial Court for allowing the plaintiff to lead additional evidence and then afford an opportunity to the defendants to lead evidence, if any to rebut the additional evidence so led by the plaintiff and then to decide the suit afresh in accordance with law.

[12]. Under Order 41 Rule 28 CPC, the lower Appellate Court was obligated to decide itself the mode of taking additional evidence. The lower Appellate Court while accepting the application was required to take such evidence of its own or should have directed the trial Court to take such evidence and to send a report to that effect to the lower Appellate Court.

[13]. In my considered opinion, the remand of the case in entirety is not justified and the lower Appellate Court has committed an error of jurisdiction while remanding the case to the trial Court as a whole.

[14]. In view of above, I deem it appropriate to set aside the impugned judgment dated 26.02.2014 passed by Additional District Judge, Jalandhar to the extent of remanding the case to

the trial Court and also to re-visit the ground on which the petitioner has prayed for leading additional evidence in accordance with law. However, the lower Appellate Court would be at liberty to decide the mode of taking additional evidence in terms of Order 41 Rule 28 CPC.

[15]. Let a fresh order be passed by the lower Appellate Court in terms of the observations made hereinabove.

[16]. Disposed of.

02.12.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No