

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

RSA No.6228 of 2017 (O&M)

Date of decision : 22.12.2017

Ram Singh and another

...Appellants

Versus

Vinod Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Kinra, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

This case has a chequered history. Surjito Devi and Jarnail Singh had sold the land measuring 3 marlas vide sale deed dated 16.04.1990 in favour of one Ajit Prashad. Thereafter, Ajit Prashad sold the property in favour of the plaintiffs vide sale deeds Ex.P16 and Ex.P17.

The defendants challenged the aforesaid sale deeds by filing the suit. Later on, the defendants withdrew the aforesaid suit. In the written statement, the defendants had taken a plea that the suit has already been partitioned. Once again, defendant No.1 filed a fresh suit against Jagat Ram and Vinod Kumar, the subsequent purchasers. The aforesaid suit was dismissed on 23.12.1991. Thereafter the parties entered into a settlement on 07.08.1991. Another suit filed by Ram Singh was dismissed as withdrawn in

the year 1991.

Ram Singh filed still another suit for permanent injunction, which was dismissed by the trial Court on 17.12.2008. First appeal preferred was dismissed on 23.03.2009. Regular Second Appeal filed in this Court was also dismissed on 16.03.2011.

The plaintiffs filed a suit for possession and recovery of mesne profits. Both the Courts below have recorded a finding of fact that the plaintiffs have unauthorisedly encroached upon area which was sold by their predecessor vide sale deed dated 16.04.1990.

Learned counsel for the appellants has argued that the plaintiffs have not produced on file any evidence on title. He has further submitted that the decree is not executable because the property is joint property. He has further submitted that unless and until the property is demarcated by appointing the Local Commissioner, the property cannot be sold. He has further submitted that there was a settlement between the parties Ex.P22 which has not been complied with.

I have considered the submissions made by the learned counsel for the appellants and with his able assistance gone through the judgments passed by both the Courts below.

It may be significant to note here that there was no issue with regard to the title of the plaintiffs. In fact, the purchase by Ajit Prashad on 16.04.1990 was subject matter of challenge by the plaintiffs in a separate suit which was withdrawn on 06.09.1991. Thus the title of the plaintiffs was never in dispute in the present litigation.

Next argument of the learned counsel is that the decree is

unexecutable on the ground that the property is joint between the parties.

The prayer made by the plaintiffs reads as under:-

“Suit for a decree for possession in respect of 3 shops and 2 stores constructed upon 96 square yards area being part of Khasra No.35, situated in the abadi of Village Maheshpur, Sector 21, Panchkula as shown in the site plan and for recovery of mesne profits @ Rs.28,000/- per month from 1.8.2009 till the date of delivery of possession of the premises in question.”

It is not in dispute that 3 shops and 2 stores have been constructed over 96 square yard area identified construction being part of khasra No.35.

It is not a case of agricultural land where one does not know which part would fall to the share of a particular co-sharer. It is a case where the sale was made of the specific area with identification of the property on all the four sides.

In the considered opinion of this Court, such being the situation particularly in the case of area under construction, the argument that the parties are co-sharer and sale is of an undivided share would not be available.

Next argument of the learned counsel is that the revenue official should be appointed to demarcate the area.

Learned counsel was requested to point out whether there was any request ever made before the Courts below, the answer was in negative. Such being the situation, this Court for the first time in the Regular Second Appeal, cannot entertain such argument.

Next argument of the learned counsel is that Ex.P-22, the

settlement between the parties have not been complied with. In this case, the parties have not complied with any settlement. There was another settlement dated 07.08.1991, however, the defendants-appellants failed to honour the same.

In these circumstances, it is clear that the defendants-appellants are not the honest litigants.

In view thereof, there is no scope for interference.

Regular Second Appeal is dismissed.

22.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No