

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

**(1) RSA No.704 of 2000 (O&M)
Date of Order: 27.09.2018**

Vidyawati and others

..Appellants

Versus

Sumitra Devi and others

..Respondents

(2) RSA No.3081 of 1996 (O&M)

Vidyawati and others

..Appellants

Versus

Sumitra Devi and others

..Respondents

(3) RSA No.373 of 2000 (O&M)

Raghbar Dayal and others

..Appellants

Versus

Smt. Sumitra Devi Jain and others

..Respondents

(4) RSA No.374 of 2000 (O&M)

Raghbar Dayal and others

..Appellants

Versus

Smt. Sumitra Devi Jain and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Akshay Bhan, Sr. Advocate, with
Mr. Santosh Sharma, Advocate,
for the appellants.**

**Mr. Adarsh Jain, Advocate,
for the appellants (in RSA No.704 of 2000)
for the appellants (in RSA No.3081 of 1996)
for respondents no.11 to 18 (in RSA Nos.373 & 374 of 2000)**

**Mr. Amit Jain, Advocate,
for the respondents (in RSA No.704 of 2000)**

for respondent nos.1 to 10 (in RSA Nos.373 & 374 of 2000)

Mr. Vipul Dharmani, Advocate, for
Mr. Sandeep Vermani, Advocate,
for the respondents (in RSA No.3081 of 1996)

ANIL KSHETARPAL, J.

C.M.No.12143-C-2018

Application has been filed for impleading subsequent purchasers of a part of the property during the pendency of the suit. In the considered view of this court, subsequent purchasers are bound by rule of lis pendence. Hence, the decision in the appeal would be binding upon them, therefore, there is no necessity of impleading them as party-respondent.

MAIN

By this judgment, regular second appeal nos.704 of 2000, 3081 of 1996, 373 and 374 of 2000 shall stand disposed of. Counsel for the parties are also ad-idem that all these appeals can conveniently be disposed of by a common judgment as the issue for determination is common.

Dispute between the parties is whether Jaggi Mal, the common ancestor of the parties during his life time had partitioned the properties in the year 1960-62 or not?

One suit has been filed by Sheetal Prasad, respondent, seeking partition and rendition of accounts of the joint properties. Sheetal Prasad had also filed a suit for redemption of the mortgage dated 26.12.1967 executed by Jaggi Mal in favour of his two sons, namely, Raghbar Dayal and Sumat Prasad. All these four appeals arise from the aforesaid two suits.

The suit filed by Sheetal Prasad seeking partition and rendition of accounts was dismissed by the trial court, however, learned first appellate

court has reversed the judgment and decree passed by the trial court and ordered passing of preliminary decree for partition but relief of rendition of accounts has been declined. It may be noted that Sheetal Prasad is not in appeal.

In the present case, there are 4 documents, which need consideration and would determine the entire controversy. According to the defendants-appellants mainly Nem Chand, Jaggi Mal, their father, had deposed in court on 24.07.1962 admitting that he has partitioned the property.

Learned counsels for the appellants have submitted that while reading the statement of Sheetal Prasad to contend that Sheetal Prasad admits that all the parties were having separate ration card and they had constructed separate residences, of course, in the property owned by their father. It has further been brought to the notice of the court that Sheetal Prasad was in service and never lived with the family. It has further been pointed out that all the parties have been dealing in the property separately, treating the same to be their individual property.

At this stage, it is significant to note that Jaggi Mal was common ancestor of the parties, who died on 24.07.1974 . He had 10 sons and 5 daughters. It is not in dispute that 5 sons had been given in adoption including Sohan Lal and, therefore, remaining members of the family were Sheetal Prasad, Nem Chand, late Sh. Raghbar Dayal, Sumat Prasad and Rattan Chand. It is undisputed that Raghbar Dayal and Sumat Prasad were deaf and dumb from the very beginning.

Now let us consider those 4 documents which would determine fate of the appeals.

First document as noticed is a statement given by Jaggi Mal in a suit for ejectment filed against tenant in the year 1962 wherein he state that name of my son is Nem Chand. I do not reside with him and I do not work on the aforesaid shop. He had separated from me for the last 2 years but there is no formal partition. I have separated my children. One youngest son and 2 sons who are deaf and dum are residing with me. House is joint of all. Although, their share is separate (effort has been made to exactly translate the relevant portion of the statement).

On the basis of the aforesaid statement coupled with the statement of Sheetal Prasad, learned counsel for the appellants want this court to arrive at a finding that the properties have been partitioned.

On the other hand, learned counsel for the respondent-Sheetal Prasad through his legal heirs has drawn attention of the court to a registered Will executed by Jaggi Mal dated 14.01.1971, wherein Jaggi Mal has specifically stated that he is owner in possession of all the properties. It may be significant to note that execution and registration of the aforesaid Will is also not in dispute between the parties.

Second document is revocation deed again executed by Jaggi Mal dated 18.02.1974 by which Will dated 14.01.1971 was revoked on account of the fact that Sumat Prasad and Rattan Lal were not obeying Jaggi Mal. However, it may be noticed that in the document dated 18.02.1974 (revocation deed) there is no mention of any partition between the family members. Jaggi Mal in that document also declares that he is owner of all the properties.

There are two more documents, which lead to the conclusion that Jaggi Mal during his life time, remained owner of the property. First is

mortgage deed dated 26.12.1967 executed by Jaggi Mal in favour of his two sons Sumat Prasad and Raghbar Dayal (deaf and dumb). Although, it is the case of the defendants-appellants that the aforesaid mortgage has been redeemed. Apart therefrom, there is another mortgage deed executed by Jaggi Mal on 10.04.1973, Ex.D4/2 in favour of Upkar General Store wherein also Jaggi Mal mortgages property i.e. shop which is opposite to post office.

This court has considered the submissions of learned counsel for the parties and with their able assistance gone through the judgments passed by the courts below and the record.

In view of the 4 documents, namely, the Will dated 14.01.1971, revocation deed dated 18.02.1974, mortgage deed dated 26.12.1967 and dated 10.04.1972, it is apparent that Jaggi Mal throughout his life treated all the properties to be his own as he died on 24.07.1974. So last document, which was executed by him on 18.02.1974 while revoking the Will, wherein he nowhere mention that the properties had already been partitioned. In such circumstances, the statement of Jaggi Mal given in the eviction proceedings as a landlord is to be read in the context it was made. It might be true that all the sons were made to reside in separate portion where they were allowed to raise construction. However, there is no evidence of partition of the property. There is a difference between settling the parties in separate possession and formal partition. In the present case, reading of the document which have been noticed above, does not prove that there was any partition of the property by Jaggi Mal during his life time.

In view of the aforesaid, this court does not find any good ground to interfere with the findings of fact arrived at by the court while

deciding Civil Appeal No.64 of 29.07.1999, decided on 28.09.1999.

Regular Second Appeal Nos.704 , 373 and 374 of 2000 are dismissed.

Regular Second Appeal No.3081 of 1996 is arising out from a suit for possession by way of redemption and the appellant-Vidywati etc. have filed the appeal only. The first appellate court has already recorded a finding with regard to the fact that the properties continued to be joint.

In view of the findings arrived at in the other appeals, this appeal is also dismissed.

Miscellaneous applications, if any, are disposed of in view of the judgment passed above.

September 27, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No