

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

1. RSA No.644 of 2012 (O&M)
Date of decision : 27.09.2018

Ravinder Singh Sidhu

...Appellant

Versus

Capt. Amritpal Singh and others

...Respondents

2. RSA No.645 of 2012 (O&M)
Date of decision : 27.09.2018

Miss Satwinder Kaur Sidhu

...Appellant

Versus

Capt. Amritpal Singh and others

...Respondents

3. RSA No.654 of 2012 (O&M)
Date of decision : 27.09.2018

Miss Satwinder Kaur Sidhu

...Appellant

Versus

Capt. Amritpal Singh and others

...Respondents

4. RSA No.655 of 2012 (O&M)
Date of decision : 27.09.2018

Ravinder Singh Sidhu

...Appellant

Versus

Capt. Amritpal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate for the appellant.
(In RSA Nos.644 and 655 of 2012)

Mr. Manjeet Singh, Advocate for the appellant
(In RSA Nos.645 and 654 of 2012)

Captain Amritpal Singh, respondent in person.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

By this common judgment, four Regular Second Appeals being RSA Nos.644, 645, 654 and 655 of 2012 shall stand disposed of.

There is an application for additional evidence bearing CM No.13167-C of 2015 in RSA No.644 of 2012, which shall be discussed while deciding the main case.

These four appeals arise out of three suits filed by the parties against each other. First suit was filed by Captain Amritpal Singh and Devinder Kaur, his wife against Satwinder Kaur Sidhu and Ravinder Singh Sidhu. Prayer in the suit was for grant of decree for permanent injunction restraining the defendants from causing damage and encroaching upon the land and restrained the defendants from interfering in their peaceful possession. Second suit was filed by Ravinder Singh Sidhu for declaration

of possession, mandatory injunction and permanent injunction. Ravinder Singh Sidhu claims that he is owner and, therefore, entitled to possession of the forcibly encroached area and for mandatory injunction directing removal of the construction and permanent injunction restraining the defendants from creating any charge on the property. In this suit, the defendants are Captain Amritpal Singh, his wife Devinder Kaur and Satwinder Kaur Sidhu. Third suit is filed by Satwinder Kaur Sidhu against Captain Amritpal Singh, Devinder Kaur and Ravinder Singh Sidhu in which challenge is to the alleged agreement to sell dated 13.08.1992 and two sale deeds dated 18.08.1992 registered on 19.08.1992 and 20.08.1992 with respect to two plots of 250 square yards each comprised in Khasra No.70/2/2 on the ground that such sale deed is result of fraud and misrepresentation. She also prayed for a decree for permanent injunction restraining the defendants from selling, mortgaging, transferring or raising any construction.

Some facts will be required to be noticed before this Court deals with the arguments of the learned counsel for the parties.

Ravinder Singh Sidhu purchased the land measuring 3 bighas and 14 biswas in khasra No.70/2/2 on 25.10.1968. His mother Joginder Kaur was already owner of 3 bighas and 14 biswas of adjoining land comprised in khasra No.70/2/3, 69/2/3, 69/2/2. Joginder Kaur executed a Gift Deed in favour of her daughter Surinder Kaur with respect to land measuring 1808 square yards on 09.03.1972. In the month of May, 1972 Joginder Kaur also executed a gift deed in favour of her another daughter Satwinder Kaur with respect to land measuring 1283 square yards.

Ravinder Singh Sidhu through his mother and attorney Joginder

Kaur sold 1000 square yards area vide registered sale deed dated 30.03.1976 in favour of Satwinder Kaur, her sister. It is alleged that Ravinder Singh Sidhu was working as a Law Officer with Indian Railways and, therefore, remained posted at different cities. It is further alleged that in his absence, his mother and sister Satwinder Kaur use to manage the property.

It is further allegation of Satwinder Kaur that Municipal Corporation, Patiala wanted to construct a road and take away prime land of the family. They challenged the proposed acquisition by filing the writ petition which was dismissed and the appeal filed against the same was also dismissed by Hon'ble the Supreme Court.

It is the case of the plaintiff-Satwinder Kaur Sidhu that since Captain Amritpal Singh was having good relationship, therefore, she was impressed upon that if she wants to save the land, she will have to transfer the property in their favour and hence agreement to sell dated 13.08.1992 was executed, got signed and sale deed dated 18.08.1992 were also got signed which were registered on 19.08.1992 and 20.08.1992. It is the case of Ravinder Singh Sidhu that Captain Amritpal Singh and Devinder Kaur, his wife, have taken the possession and raised certain construction.

Captain Amritpal Singh and his wife Devinder Kaur, alleged that Satwinder Kaur who was owner, had sold two plots measuring 250 square yards each for a valid sale consideration. It is pleaded case that initially ₹2,00,000/- was paid as earnest money but thereafter Satwinder Kaur started demanding more amount as the road has been carved out by the Municipal Corporation, therefore, by mutual agreement, another amount of ₹75,000/- was paid on 15.08.1992. Thereafter two sale deeds were executed

and registered in favour of Captain Amritpal Singh and his wife, Devinder Kaur.

Learned Trial Court after appreciating the evidence available on the file, decided all the three suits by a consolidated judgment and returned a finding that allegations of fraud and misrepresentation in execution of the agreement to sell and sale deeds are not established from the record. The learned trial Court also held that Ex.D4, the alleged Memorandum of settlement between the family members through which it was sought to be projected that Satwinder Kaur was never in possession of the property sold by her in favour of Amritpal Singh and Devinder Kaur, cannot be relied and is a manipulated document. However, learned Trial Court directed Captain Amritpal Singh and his wife Devinder Kaur to remove the wall and gate while returning a finding that possession of land comprised in khasra No.70/2/2 has been forcibly taken and, therefore, they apart from being directed to remove the construction, were also restrained from raising any further construction.

Four first appeals were filed, two by Captain Amritpal Singh and Devinder Kaur, whereas two appeals were filed by Miss Satwinder Kaur Sidhu and Ravinder Singh Sidhu. Learned First Appellate Court after re-appreciating the evidence affirmed the findings of the trial Court with regard to failure of Satwinder Kaur to prove any fraud or misrepresentation in the execution of the agreement to sell or the sale deeds executed by her. Learned First Appellate Court further held that all the parties are co-sharers/co-owners and, therefore, remedy lies for resolving the dispute in seeking partition of the property. First Appellate Court further upheld the

finding of the trial Court that Ex.D4, the document putforth by Satwinder Kaur and Ravinder Singh Sidhu cannot be relied to prove the partition in between the family members, however, learned First Appellate Court has reversed the findings of the learned trial Court in which learned trial court had directed Captain Amritpal Singh and his wife to remove the construction and restrained them from raising any construction over the property in which they are in possession. It may be noted here that the two sale deeds which have been upheld by both the Courts below provide that possession of a specific portion of the property has been handed over to Captain Amritpal Singh and Devinder Kaur.

Now the stage is set for considering the submissions of learned counsel for both the parties.

In RSA Nos.644 and 655 of 2012, learned Senior Counsel appearing for the appellant has challenged the findings of the Courts below by referring to Ex.D3, a sale deed executed by Ravinder Singh Sidhu pointing out that land measuring 1000 square yards out of khasra No.70/2/2 sold to Satwinder Kaur was referred to in the sale deed as waste land having no passage. He, hence submitted that Smt. Satwinder Kaur, his sister could not have executed a sale deed delivering the possession of the land situated on the front. He read the entire sale deed dated 30.03.1976 Ex.D3 to emphasis on the aforesaid point. He further referred to a Memorandum Ex.D4 to stress on the point that Satwinder Kaur Sidhu, his sister was not in possession, and, therefore, possession of a specified portion could not be delivered to Captain Amritpal Singh and Devinder Kaur. He further submitted that hence, learned trial Court correctly passed a decree directing

the respondents to remove their construction.

On the other hand learned counsel appearing for Satwinder Kaur Sidhu has submitted that the agreement to sell and sale deeds are result of fraud. He submitted that Satwinder Kaur was in a desperate situation to save the property from compulsory acquisition and, therefore, she fell prey to the evil designs of Captain Amritpal Singh, who was at that time a trainee Sub-Registrar (Naib Tehsildar). He further submitted that stamp papers for execution of the agreement to sell is dated 27.02.1992. Hence, the sale deeds are sham transaction. In fact, no payment has been made.

On the other hand, Captain Amritpal Singh, who has appeared in person, has submitted that Ravinder Singh Sidhu, at that point of time, was a presenting officer in the departmental enquiry on behalf of the Indian Railways. He submitted that he had a complete legal background and was in knowledge of the facts. He further submitted that even Satwinder Kaur Sidhu is an educated lady belonging to good family. Satwinder Kaur Sidhu had in fact already pursued the litigation to save the land by filing a writ petition in the Hon'ble High Court and thereafter challenged the order of High Court before the Hon'ble Supreme Court, therefore, the allegations made in the suit are wrong. He further submitted that at that time, he had just been appointed as a trainee Naib Tehsildar. He was not posted in the City. Hence, he submitted that the allegations made are incorrect. He further while drawing the attention of the Court to the two sale deeds executed by Satwinder Kaur submitted that he and his wife were delivered the possession of the plots measuring 250 square yards each and they immediately, secured the property by constructing the boundary wall even at

the time of execution of the agreement to sell.

As regards the argument of the learned counsel for the appellant in RSA Nos.644 and 655 of 2012, it may be noted that both the Courts have correctly recorded a finding that since the property in dispute is joint between the parties, remedy lies in seeking partition of the property. It is well settled that in a joint land even if a co-sharer sells a specific portion of the land, the purchaser would only become co-sharer and not owner in possession of exclusive portion of the property which has been delivered to him in the sale deed. No doubt, in Ex.D3, there is a reference to waste land having no passage. However, as noticed above, pursuant to the sale deed executed by Ravinder Singh Sidhu in favour of her sister Satwinder Kaur, she became co-owner in the property. In fact, the concept of co-owner is not with reference to the land comprised in particular khasra number. The concept of co-owner is with reference to a *khata/khewat*. Hence, both the Courts were correct in recording the finding that the parties are co-owners of the property. Reference placed by learned Senior Counsel on Ex.D4, also does not have any substance, as Ex.D4 is neither referred to in the agreement to sell nor it is referred to in the sale deeds. Both the Courts have correctly held that Ex.D4 is only a manipulated document which has seen the light of the day during the pendency of the litigation only.

As regards the delivery of possession of specific portion to Captain Amritpal Singh and his wife Devinder Kaur, it may be noted that it is the case of Ravinder Singh Sidhu that he was not staying in the town because of his job, and remained posted at different far away stations. Hence, his sister Satwinder Kaur, use to manage the property in his absence.

In the sale deed, possession of the specific portion of the two plots measuring 250 square yards has been delivered to Captain Amritpal Singh and his wife. Hence, the allegations of unauthorized or forcible encroachment by the purchasers namely Amritpal Singh and Devinder Kaur are not made out. Every co-owner is deemed to be in possession of every part of the joint land. Hence, the Courts have rightly held that the remedy lies in the partition of the property rather than in the injunction suits.

On the other hand, learned counsel appearing for Satwinder Kaur Sidhu in RSA No.645 and 654 of 2012 has submitted while pointing out certain contradictions in the oral statement that the findings of the Courts below are erroneous. It may be noted that the agreement to sell and the sale deed executed are being challenged by Satwinder Kaur on the ground of fraud or misrepresentation. As noted above, Satwinder Kaur is an educated woman having good knowledge of the world around her. She is resident of a town. It is the assertion of Ravinder Singh Sidhu that she was managing the property in his absence. Still further, she herself has stated that she filed and managed two litigations against proposed acquisition proceedings by filing a writ petition in the High Court and Special Leave Petition before the Hon'ble Supreme Court. Still further, agreement to sell dated 13.08.1992 is signed by her. Thereafter, she further received additional amount of ₹75,000/- after re-negotiation on 15.08.1992. Sale deeds as noticed are executed on 18.08.1992 whereas one was registered on 19.08.1992 and second was registered on 20.08.1992. Satwinder Kaur has signed on each page of the sale deed. She has also signed in the presence of the Sub-Registrar on the reverse of the first page in both the sale deeds. In

both the sale deeds, delivery of possession of specific portion of the property has been specifically recorded. In such circumstances, no error is found in the finding of the Courts that the agreement to sell and the sale deeds are valid. It is well settled that fraud is to be proved beyond reasonable doubt. In the present case, both the Courts have correctly held that no fraud has been established. The submission of learned counsel for the appellant that Captain Amritpal Singh has stated that he met for the first time Miss Satwinder Kaur on 13.08.1992 is proved to be false, is also to be noticed and rejected. A small variation/contradiction in oral evidence cannot result in setting aside the written contracts between the parties and particularly, the registered sale deeds, which have been executed. It may further be noted that Municipal Corporation had framed a town planning scheme in the name of Sardarni Joginder Kaur mother of Ravinder Singh Sidhu and Satwinder Kaur. It has also come on record that entire land of khasra No.70/2/2 is located on the main road. It is undisputed that after the execution of the sale deed by Ravinder Singh Sidhu in favour of Satwinder Kaur on 30.03.1976, she became co-sharer in the property. Hence, this Court does not find any substance in submissions of learned counsel for the appellant representing Satwinder Kaur Sidhu.

In view of the aforesaid discussion, all the four appeals are dismissed and the judgment and decree passed by the learned First Appellate Court is upheld.

An application for additional evidence bearing CM No.13167-C of 2015 in RSA No.644 of 2012 filed by the appellant also does not have any substance as the appellant-Ravinder Singh Sidhu wishes to produce a

copy of FIR got registered by Satwinder Kaur Sidhu against Captain Amritpal Singh and others on 15.02.2008, two orders passed by the Court while deciding application under Order 39 Rules 1 and 2 of CPC. It may be noted that the orders passed by the Courts while deciding application under Order 39 Rules 1 and 2 of CPC, are not in the suit in which Captain Amritpal Singh or Devinder Kaur were party. Still further, any prima facie finding of the Court while deciding the application for temporary injunction would not bind the Court while finally determining the dispute. It is rightly held by the Courts below that all the parties are co-sharers, and, therefore, remedy lies only for seeking partition.

In view thereof, the application for additional evidence is also dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No