

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.43 of 2015 (O&M)
Date of decision: 30.4.2018

Jagmohan Singh and another

....Appellants

Versus

Sat Parkash Goyal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Sumneet Mahajan, Sr.Advocate with
Ms.Ramneek Kaur, Advocate for the appellants.

Mr.Sanjeev Goyal, SPA of respondent No.1 in person.

KULDIP SINGH, J. (Oral)

Impugned in the present second appeal against the order is the order dated 12.3.2015 passed by learned Additional District Judge Ludhiana whereby an application filed by the present appellants for permission to file third party appeal against the ex parte judgment and decree dated 20.5.2013 passed by learned Additional Civil Judge (Sr.Divn.) Ludhiana was dismissed and consequently the appeal was also dismissed.

It is necessary to go into the background of the case. It comes out that Sat Parkash Goyal filed a suit for declaration against his brother Megh Raj to the effect that he is owner in joint possession to the extent of 1/4th share in the property situated in Ludhiana and owner in possession of property at Mumbai as detailed in the plaint. He has also sought injunction against him. The suit was instituted on 14.5.2003. On being put to the

notice, defendants put in appearance and filed written statement putting forward his side of the story. However, after framing of the issues, the defendants skipped from the proceedings and were proceeded against ex parte on 7.11.2007. Consequently, after recording ex parte evidence, the suit filed by the plaintiff was decreed.

It also comes out that the defendant vide sale deed dated 9.3.2006 sold his Ludhiana property to N.S.Bhangu and Satnam Singh, who further sold the same vide two sale deeds dated 10.10.2012 and 14.5.2013 to the present appellants Jagmohan Singh and Arun Kumar. The present appellants thereafter preferred an appeal against judgment and decree dated 2.7.2013 i.e. within limitation. They also filed application for permission to file appeal being aggrieved persons. The learned Additional District Judge after hearing both the parties, dismissed the said application and consequently, the appeal was also dismissed.

I have heard learned counsel for the parties and have gone through the case file carefully.

The law question framed by this Court on January 17, 2018 is as under:

“Whether a person, who is not party to the suit before the lower court can maintain an appeal if so, on which grounds?”

It comes out that under Section 96 of the Code of Civil Procedure, 1908 the right to file appeal against judgment and decree of the trial Court is given. Similarly, in Section 100 of CPC 1908, right to file second appeal is given. Right of second appeal is also covered by Section 41 of the Punjab Courts Act, 1918. However, the said Sections are silent as

to who can prefer an appeal. Normally a person, who is party to the suit has undoubtedly right to file an appeal. Now the question is as to when a person, who though not party to the suit but is adversely affected by the judgment and decree can maintain an appeal? The issue was examined by Hon'ble Supreme Court of India in ***Hardevinder Singh Vs. Paramjit Singh and others (2013) 9 Supreme Court cases 261*** wherein the Apex Court observed as under.

17. “Presently, it is apt to note that Sections 96 and 100 of the Code make provisions for preferring an appeal from any original decree or from a decree in an appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. If a judgment and decree prejudicially affects a person, needless to emphasise, he can prefer an appeal. In this context, a passage from *Jatan Kumar Golcha v. Golcha Properties (P) Ltd.* is worth noting: (SCC p.575, para 3)

“3..... It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment.”

Therefore, the Apex Court laid down that if a person is prejudicially or adversely affected by the decree, he can maintain an appeal. The said views were followed by the Kerala High Court in ***Ramchandran Potti Versus Thankam 2005(1) RCR (Civil) 159.***

Now this Court has to examine as to whether the appellants are prejudicially or adversely affected by the decree or not? The facts stated above clearly state that it was a litigation between the two brothers. The civil suit was initially contested by the defendant, however, during the pendency of the suit on 9.3.2006, he sold the disputed property to

N.S.Bhangu and Satnam Singh vide registered sale deed. The suit was still continued before the trial Court when N.S.Bhangu and Satnam Singh also sold the said property vide two sale deeds dated 1.10.2012 and 14.5.2013 to the present appellants Jagmohan Singh and Arun Kumar. Therefore, qua the Ludhiana property, the present appellant stepped into the shoes of Megh Raj defendant. The rule of *lis pendens* will apply to them and judgment and decree passed in this case will be binding on them. It also comes out that later on defendant lost interest in the proceedings before the trial Court and was proceeded against ex parte on 7.11.2007. Now the present appellants being successors-in-interest, are entitled to prosecute or defend the case on their behalf and in my view, are prejudicially and adversely affected by the judgment and decree of the trial Court dated 20.5.2013.

The respondent has argued that facts of the said case are different. In the said case, no relief was claimed against defendant No.5 in the appeal as plaintiff and other defendants effected compromise, therefore, it was held that defendant No.5 was adversely affected by the decree and has a right to maintain appeal. There can be numerous instances where the person is adversely affected by the judgment and decree. The purchaser during the pendency of the suit, is one of the person, who is adversely affected by the decree and therefore, when the defendant who was original owner, is not challenging the decree, having lost interest in the case, the subsequent purchasers who purchased the property or part thereof during the pendency of the suit, can maintain an appeal against the judgment and decree. They could file an application for permission to file the appeal. In such circumstances, such application should have been allowed and appeal

should be heard and decided on merits.

Learned counsel for the appellants has also referred to Section 146 of the CPC, which is reproduced as under:

“146. Proceedings by or against representatives.- Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.”

This Section more or less lays down same principle as laid down in *Hardevinder's case (supra)*.

The respondent has argued that he has placed on file certain documents to show that the sale deed is a Sham transaction. I am of the view that this aspect cannot be gone into by this Court as only limited law point referred above is to be decided. The respondent is at liberty to raise the said plea during the hearing of the appeal and can be dealt with by the lower Appellate Court.

It being so, the present appeal is allowed and the impugned order dated 12.3.2015 passed by learned Additional District Judge, Ludhiana is set aside and permission is granted to the present appellants to file appeal against the ex parte judgment and decree dated 20.5.2013 passed by Addl.Civil Judge (Sr.Divn.) Ludhiana.

Consequently, the lower Appellate Court is directed to revive the appeal and hear the same on merits and dispose of the same by passing a speaking judgment. Lower Court's record be returned immediately.

The parties are directed to appear before lower Appellate Court on 23.5.2018 at 10 A.M. Till then, further alienation of the disputed

property shall remain stayed.

Since the main case is allowed, the pending Civil
Miscellaneous applications are also disposed of.

(KULDIP SINGH)
JUDGE

30.4.2018
Meenu

Whether speaking : Yes
Whether reportable : Yes