

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

1. XOBS-30-C-2018 (O&M) in/and
RSA No.4705 of 2017 (O&M)
Date of decision : 19.12.2018

Fateh Singh Jain (deceased) through his LR and others

...Appellants

Versus

Vipin and others

...Respondents

2. XOBS-29-C-2018 (O&M) in/and
RSA No.4707 of 2017 (O&M)
Date of decision : 19.12.2018

Fateh Singh Jain (deceased) through his LR and others

...Appellants

Versus

Jyoti Singhal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gopal Sharma, Advocate for the appellants.

Mr. Rakesh Gupta, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

**CM No.12474-C of 2017 in RSA No.4705 of 2017, &
CM No.12478-C of 2017 in RSA No.4707 of 2017**

For the reasons stated in the applications, which are duly
supported by an affidavit, delay of 10 days in refiling the present appeals is

condoned.

Applications are allowed.

CM No.12475-C of 2017 in RSA No.4705 of 2017, &
CM No.12479-C of 2017 in RSA No.4707 of 2017

For the reasons stated in the applications, which are duly supported by an affidavit, legal heirs of deceased Fateh Singh Jain as mentioned in para 2 of the applications are ordered to be brought on record for the purpose of prosecuting the present appeals.

Applications are allowed.

CM No.18337-C of 2018 in XOBS-30-C-2018 in RSA No.4705 of 2017, &
CM No.18336-C of 2018 in XOBS-29-C-2018 in RSA No.4707 of 2017

For the reasons stated in the applications, which are duly supported by an affidavit, delay of 322 days in filing the cross objections is condoned.

Applications are allowed.

MAIN

By this judgment, two appeals and two cross-objections shall stand decided as all the appeals and cross-objections are arising from one suit filed by Fateh Singh Jain and his children who are appellants in RSA Nos.4705 and 4707 of 2017, disposed of by the trial Court by a single judgment and two appeals preferred before the First Appellate Court were also disposed of by a common judgment.

Counsel for the parties are also agreed that all the four appeals/cross-objections can be conveniently disposed of by a single judgment.

The plaintiffs filed the present suit claiming that they are

owners in possession of 79 square yards, 10 inches area. It was pleaded that their common predecessor i.e. Chiman Lal was owner of 120 square yards and on his death, his two sons Ram Saran and Ram Gopal became owners of 60 square yards each. Fateh Singh Jain and his children are successors of Ram Saran whereas the defendants in the suit are successors of Ram Gopal who was having one son Dwarka Dass and name of his widow is Savitri Devi. Dwarka Dass was having one son namely Vikas Jain.

It is the case of the plaintiffs that Dwarka Dass sold 20 square yards area for ₹99/- through an unregistered sale deed dated 09.04.1957 in favour of Kamla Devi widow of Fateh Chand Jain. It is further pleaded case of the plaintiffs that Dwarka Dass sold 40 square yards area i.e. the remaining area with him in favour of Dalip Singh vide sale deed dated 09.04.1957 which is Ex.PW2/A on the record. The plaintiffs further pleaded that thereafter family of Dwarka Dass became dishonest and through collusive decree, Savitri (wife of Dwarka Dass) is alleged to have transfer the property in favour of Vikas Jain dated 01.02.1988 and Vikas Jain thereafter sold the property in favour of Monika on 17.03.2009 and thereafter Monika sold the property in favour of Kunal Mehta vide sale deed dated 09.07.2009. Kunal Mehta sold the property in favour of Vipin dated 16.07.2012 and Vipin has now sold the property in favour of Jyoti Singhal vide sale deed dated 18.06.2014.

Defendant No.1 i.e. Vikas Jain contested the suit and pleaded that the property in dispute was never owned by Chiman Lal, their predecessor-in-interest and in fact it was self-acquired property of Savitri

Devi. Remaining defendants pleaded that they are bona fide purchasers of the property from time to time as noticed above.

In order to prove the sale of land vide unregistered sale deed dated 09.04.1957 by Dwarka Dass in favour of Kamla Devi, Mark "A" a writing dated 09.04.1957 was produced through which Dwarka Dass had sold 20 square yards land in favour of wife of his cousin brother (Smt. Kamla) for ₹99/-. This document would be discussed later on. Thereafter, on the same day, a registered sale deed has been executed by Dwarka Dass in favour of Dalip Singh for 40 square yards area at a total sale consideration of ₹250/-. On the northern side, the property of Fateh Singh, Mangal Singh and Balwant Singh who are children of Ram Saran, has been shown. Still further, on careful reading of the aforesaid sale deed, it is apparent that Dwarka Dass or his family members are not shown to be owner of any other adjoining property, although the property on all the four directions have been specifically described.

On appreciation of the evidence, learned trial Court found that the decree suffered by Savitri Devi in favour of her son Vikas Jain and subsequent sale transactions, are illegal and void and does not affect the rights of the plaintiffs. The trial Court further found that the plaintiff's case is proved from combined reading of registered sale deed executed by Dwarka Dass and Mark A, an unregistered sale deed of the even date. The Court further found that the plaintiffs have been dispossessed during the pendency of the suit and, therefore, they are entitled to restoration of the possession.

Two appeals were preferred, one by Vipin and second by Jyoti, both purchasers during the pendency of the suit. Learned First appellate Court has reversed the finding of the learned trial Court on two counts:-

- 1) Dalip Singh has not been impleaded as party, although he had purchased 40 square yards area.
- 2) Learned trial Court has wrongly considered in evidence Mark A i.e. writing dated 09.04.1957, although it has not been proved on file and only photocopy has been produced.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

In the considered view of this Court, the question which needs consideration is as under:-

- a) Whether in a residential or commercial area, an individual who has purchased specific portion of the property clearly identified by size of the plot and the properties located on all the four directions becomes co-sharers/co-owner?

This Court has specifically requested the learned counsel appearing for Vipin and Jyoti to prove that Savitri was ever owner of any part of the property in dispute. He frankly admitted that there is no document on the file. In such a situation, Civil Court is required to decide the case on the basis of preponderance of the evidence. Here in the present case, Dwarka Dass who was husband of Savitri had sold 40 square yards to Dalip Singh vide sale deed dated 09.04.1957. In the aforesaid sale deed, northern side property of plaintiff No.1 and his brother has been depicted.

Still further, if one co-jointly reads the registered sale deed Ex.PW2/A executed by Dwarka Dass and Mark A, it is apparent that Dwarka Dass was not left with any part of the plot, after executing these two documents. Once, there is no document on the file which proves that Savitri had self-acquired property in question, the findings of the learned trial Court that the case set up by the plaintiffs stands proved, cannot be said to be erroneous. In fact, First Appellate Court, as noticed above, has accepted the appeal only on two counts, as noticed above.

Now the stage is set for answering the question of law framed earlier.

In the considered view of this Court, if an owner of the property, which is not agricultural land but as a part of residential area and the property is being sold with specific dimensions and duly identified by the properties situated on all the four directions, such purchaser does not become co-sharer with his vendor. Hence, Dalip Singh was not required to be impleaded as party because the plaintiffs were not claiming any share or any relief against Dalip Singh. Thus, the First Appellate Court clearly erred while dismissing the suit filed by the plaintiffs on this ground.

No doubt, Mark A is only a photocopy of the unregistered sale deed and hence cannot be read in evidence, however, the Court can certainly take into consideration the document which has come on record by co-jointly reading the sale deed as well as document Mark A which has been executed on a non-judicial stamp paper accompanied by lay out plan. This document was executed on 09.04.1957 whereas the suit was filed after 43 years of the execution of the document. On co-joint reading of both the

documents, it is apparent that Dwarka Dass was not owner of any part of the disputed property. Still further, consent decree and the subsequent sale transaction which have been noticed above are based upon title of Savitri Devi for which no documentary evidence has been produced.

In view thereof, the judgment passed by the learned First Appellate Court is set aside and that of the trial Court is restored.

Appeals are allowed and Cross-objections are dismissed.

Question of law as framed earlier is answered in favour of plaintiffs/appellants in the appeals.

Learned counsel for the Cross-Objectors has submitted that there is no evidence that the plaintiffs were dispossessed during the pendency of the suit. He has referred to cross-examination of Vipin and affidavit of plaintiff wherein existence of house of Vipin is admitted. However, learned counsel has overlooked that the sale in favour of Vipin is during the pendency of the suit. Obviously, the construction is after the purchase of the property.

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

19.12.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**