

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-4131-2019 (O&M)

Date of decision: 05.09.2019

M/s DLF Home Developers Ltd

..... Appellant

Versus

Harmit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Chetan Mittal, Senior Advocate with
Mr. Harsh Bungar, Advocate for the appellant.

RAMENDRA JAIN, J. (ORAL)

This regular second appeal has been filed by a third party, claiming itself to be the successor of original defendants No. 12 and 13, namely; M/s Vilina Estate Developers Pvt. Ltd. and M/s Kalvin Builders and Constructions Pvt. Ltd., respectively, without any pleadings to this effect or documentary proof regarding their merger in appellant-Company or any application permitting it to file this appeal, laying challenge to judgment and decree of lower Appellate Court dated 07.01.2019, affirming the judgment and decree of trial Court dated 06.07.2015, whereby suit for declaration and permanent injunction filed by respondents-plaintiffs No. 5 to 9, was decreed and they along with respondent-defendants No. 10 to 12 were declared joint owners in possession of the suit land.

Briefly, according to respondent-plaintiffs No. 5 to 9, Hari Singh S/o Chotu Ram their father, one Shiv Kumar, predecessor-in-interest of respondent-plaintiffs No. 8 and 9 and respondent-defendants No. 10 to 12, were owner in possession of suit land to the extent of 2/3rd share, comprising khasra No. 457/381 i.e. 453.33/680 share, as per jamabandi for the year 1981-82. Remaining 1/3rd share was owned by other co-sharers, namely; Shanti Devi etc., who sold the same to respondent-defendants No. 1 to 4, who further sold it to respondent-defendants No. 16 to 19 and one Dial Singh, predecessor-in-interest of respondent-defendants No. 13 to 15. Hari Singh, never transferred his share or any portion thereof, to anyone. However, Halqa Patwari, while preparing next jamabandi for the year 1986-87, due to some clerical mistake wrongly shown respondent-defendant No. 1 to 4 as owner to the extent of 2/3rd share, contrary to the earlier jamabandi for the year 1981-82, showing 2/3rd share of Hari Singh. Resultantly, share of Hari Singh was wrongly reduced to 1/6th share in the revenue records. Hari Singh, died intestate. Mutation of his inheritance No. 668 was sanctioned in favour of his widow Rukmani Devi, mother of respondent-plaintiffs No. 5 to 7 and Shiv Kumar. Said mistake committed by Halqa Patwari in jamabandi for the year 1986-87 was carried forward, in jamabandi for the year 1991-92. Consequently, Rukmani Devi was wrongly shown as owner to the extent of 115 shares, against her entitlement of 455.33 (i.e. 2/3rd share) in the suit land being successor of her husband Hari Singh. By that time, respondent-defendants No. 1 to 4 had left with no share in the suit land, but still were wrongly shown owners to the extent of 310

shares. Rukmani Devi, suffered a decree in favour of respondent-plaintiffs No. 5 to 7 and late Shiv Kumar. Possession of the suit land continued throughout with the plaintiff-respondents No. 5 to 9 and prior to that with their predecessor-in-interest. Taking advantage of wrong entries in the revenue record, respondent-defendants No. 1 to 4 executed sale deed dated 08.06.2006, registered on 09.06.2008 in favour defendant No. 12-M/s Vilina Estate Developers Pvt. Ltd. Similarly, respondent-defendants No. 17 and 19, executed sale deed dated 15.11.2006, in favour of defendant No. 13-M/s Calvin Builders and Constructions Pvt. Ltd. Aforesaid sale deeds being non-est and illegal had no legal sanctity qua the share of respondent-plaintiffs No. 5 to 9 and respondent-proforma defendants No. 10 to 12.

With these broad submissions respondent-plaintiffs No. 5 to 9 filed a suit for joint possession and declaration to declare them owner in possession to the extent of 2/3rd share in the suit land and restraining the respondent-defendants from interfering in their peaceful possession.

Upon notice, respondent-defendants No. 1 to 4, 13 to 19, contest the suit tooth and nail. After holding trial, suit of the plaintiffs was decreed by the trial Court vide judgment and decree dated 06.07.2015.

Being aggrieved, respondent-defendants No. 1 to 4, approached the lower Appellate Court, but remained un-successful as their appeal too was dismissed vide judgment and decree dated 07.01.2019.

Learned counsel for the appellants *inter alia* contends that

right of respondent-plaintiffs No. 5 to 7 and Shiv Kumar, in the suit land had accrued by virtue of judgment and decree suffered by Rukmani Devi, their mother in the year 1997, whereby her 1/6th share was transferred as per family settlement in favour of respondent-plaintiffs No. 5 to 9. The instant suit was filed by respondent-plaintiffs in the year 2009 i.e. after 12 years. Thus, the same was hopelessly time barred. Both the Courts below without appreciating the above fact, illegally and erroneously decreed the suit. Decree was suffered by Rukmani Devi, on the basis of revenue entries showing her co-sharer to the extent of 1/6th share. Thus, both the Courts below could not have declared respondent-plaintiffs No. 5 to 9 and respondent-proforma defendants No. 10 to 12, as owners of 2/3rd share, while decreeing their suit.

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds the instant regular second appeal merits dismissal for the reasons to follow:

The appellant-Company is a stranger to the litigation. It has filed the instant appeal claiming itself to be successor of original defendants No. 12 and 13, namely; M/s Vilina Estate Developers Pvt. Ltd. and M/s Kalvin Builders and Constructions Pvt. Ltd. However, there is no document on record showing appellant-Company as successor of aforesaid companies. Neither, any permission issued by Registrar of Companies in favour of appellant permitting it as successor of aforesaid companies is annexed with the appeal, nor this fact has been mentioned in the pleadings. Rather, the above fact mentioned in the memo of parties cannot take the place of pleading, in the absence of any specific averment

and annexation of supporting documents. Thus, this Court is of the considered view that the appellant has no *locus standi* to file instant appeal.

Undisputedly, in the revenue records till the year 1981-82, predecessor-in-interest of respondent-plaintiffs No. 5 to 7, Shiv Kumar and respondent-proforma-defendants No. 10 to 12, were shown as joint owners in possession to the extent of 2/3rd share. No document was produced by remaining respondent-defendant that Hari Singh or Shiv Kumar, ever transferred their share in their life time to anyone. Therefore, it is apparent on record that their share throughout during their life time remained intact. After the death of Hari Singh, his share devolved upon respondent-plaintiffs No. 5 to 7 through their mother-Rukmani Devi and share of Shiv Kumar, on his death had fallen to the share of respondent-plaintiffs No. 8 and 9. Since, respondent-plaintiffs No. 5 to 9 as owners were coming in possession to the extent of 2/3rd share in the suit land, therefore, it is apparent that there was no occasion for them to come to know about reduction of their share in the revenue records, on account of some clerical mistake.

In view above, suit of respondent-plaintiffs No. 5 to 9 could not have been termed as time barred. Thus, in the considered opinion of this Court, finding on issue No. 5 qua limitation in favour of plaintiffs, have rightly been recorded by both the Courts below, inasmuch as, none of the defendants could prove or produce any documentary evidence as to in what manner shares of Hari Singh and Shiv Kumar, which had devolved upon the plaintiffs, were liable to be reduced. Resultantly,

reduction in the share of respondent-plaintiffs No. 5 to 9, on account of some clerical mistake by the revenue authorities in the years 1986-87 and 1991-92, which continued till the date of filing of suit being non-est had no binding effect upon their rights .

No question of law, much less substantial, has been raised in this regular second appeal. Hence, the same is held not maintainable.

I have carefully gone through the judgments and decrees of both the Courts below and find no illegality or perversity in the same.

Dismissed.

However, the appellants who are mentioned in the memo of parties i.e. M/s Vilina Estate Developers Pvt. Ltd. and M/s Kalvin Builders and Constructions Pvt. Ltd., or their legal successors shall be at liberty to adopt appropriate recourse for recovery of sale price which respondent-defendants No. 1 to 4 and 17 to 19, had received from them in an illegal manner, taking advantage of wrong revenue entries.

September 05, 2019

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No