

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

RSA No.3332 of 2010 (O&M)
Date of decision : 26.02.2019

Sant Ram and another

...Appellants

Versus

Kundan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Bahl, Sr. Advocate with
Ms. Priyanka Kansal, Advocate for the appellants.

Mr. Viney Saini, Advocate for
Mr. G.S. Nagra, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

Plaintiff-respondent filed a suit for possession of plot/house No.651/1 measuring 13 marlas with 4 constructed rooms situated at Mohalla Mori Sultanpur Lodhi, District Kapurthala.

It has come in evidence that Ujjagar Singh, father of the plaintiff was allotted plot vide deed of conveyance executed by the Government dated 27.10.1961 Ex.P2. The boundary of the property which

was allotted is mentioned as under:-

*“On the north by H.No.652/1
on the south by gali
on the east by gali
on the west by 634/1 and gali”*

Defendants-appellants contested the suit pleading that they are in possession pursuant to a mortgage deed.

Learned trial Court, on appreciation of evidence, dismissed the suit on the ground that the property has not been properly identified.

However, learned First Appellate Court has reversed the finding of the trial Court on re-appreciation of the evidence. Learned First Appellate Court has held that a bare look at Ex.P5, a lay out plan, it is apparent that the property situated on at least three different directions match with the conveyance deed executed on 27.10.1961. The Court has further held that during the long span of more than 40 years, description of the property situated surrounding the property in dispute can change.

At the time of admission, the Court framed following substantial questions of law:-

- “1. Whether in case the boundaries of the property in question do not tally with the alleged Sale certificate, Ex.P2, then the suit for possession could have been decreed solely on the basis of Ex.P2?*
- 2. Whether the Sale Certificate Ex.P2, in which, neither the dimensions nor the area nor the length and breadth of the property have been mentioned nor it is shown to be pertaining to Mohalla Mori, could be the basis of decreeing the suit?*
- 3. Whether it was incumbent upon the plaintiff to match*

the boundaries, more so, when in the Sale Certificate on eastern side, the boundary is stated to be Gali, whereas on the eastern side of the property in question, there is a house of Pritpal Singh?

4. *Whether the agreement Ex.P1 which does not refer to the property in Mohalla Mori, which is the suit property, nor the original of which has been produced, could be made the basis for holding that the plaintiff was the owner of the suit property?*

5. *Whether the plea with respect to forcible possession in the year 2003 is vague, inasmuch as, no date etc. has been given and the same completely stands falsified from the documents, Ex.D2 to Ex.D11?"*

This Court has heard 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.

A bare look at Ex.P5 which is lay out plan produced by the plaintiff alongwith plaint, it is apparent that the properties on three directions match with the allotment letter. The property in dispute is house No.651/1. On the northern side, in the allotment letter, it has been mentioned as house No.652/1 whereas in the lay out plan, it has been shown as house of Amrik Singh. Unfortunately, in the layout plan number of the house has not been given. Otherwise, next house normally would have next number. However, house No.651 is a corner house having two streets, one on the southern side for which there is no dispute and other on the western side. Had the property purchased been different, the location of the streets in the layout plan would have changed. Still further, defendants have claimed the property on the basis of a mortgage deed. Right, title or interest of the

mortgagee has not been proved.

Learned First Appellate Court has further correctly held that during the long span of 40 years, description of the surrounding property normally would change.

Let us now try to answer the questions which are posed in the admission order.

As regards question Nos.1 and 2, it is sufficient to mention that on careful perusal of Ex.P2, the allotment letter, correctness whereof is not in dispute, house No.651/1 was allotted to the father of the appellant. The allotment letter does identify the property by giving details of the property surrounding on all the four directions. In such situation, the sale certificate which has been issued by the Government Department cannot be ignored only on the ground that total area of the property has not been given.

As regards next question, the First Appellate Court has correctly held that the location of the property is such, being a corner house, having streets towards southern and on the western side of the property, small change in location would change the entire directions of, being the corner property.

As regards next question, in Ex.P2, which is allotment letter, property has been shown to be located in Mohalla Mori. Even if Mohalla Mori has not been referred to in the family settlement, still the plaintiff being son of Ujjagar Singh becomes co-owner. Defendants does not claim any right from Ujjagar Singh.

As regards question No.5, in the plaint, it has been pleaded that the defendants had taken forcible possession in the year 2003. The suit was

filed on 09.11.2005. The pleadings with regard to dispossession in such circumstances cannot be said to be vague particularly when defendants does not claim that they have perfected their title by way of adverse possession.

Since, defendants have failed to prove that they had any valid right, title or interest in the property or the mortgagor through whom the defendants claim any right in the property, no error in the judgment passed by the learned First Appellate Court can be found.

In view thereof, there is no ground to interfere with the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

Regular Second Appeal is dismissed.

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

26.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No