

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

RSA No.432 of 2016 (O&M)

Date of decision : 13.03.2019

Suresh Kumar Sharma

...Appellant

Versus

Murari Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.R. Yadav, Advocate for the appellant.

Mr. Manish Mehta, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the Regular Second Appeal against the judgments passed by the Courts below.

Detailed facts are not required to be noticed as this Court is of the view that this case is required to be remitted back to the Court to decide the case on the basis of pleadings and evidence and not make out a new case to defeat the rights of the plaintiff.

However, some facts are being noticed. Naurang Dutt was owner of big chunk of land situated in residential area. He initially sold a plot measuring 62 feet x 62 feet with specific boundaries and identified by details of the properties situated on all the four directions in favour of Murari Lal i.e. the defendant. After 11 days, he sold another plot measuring 60 feet x 60 feet with specific boundaries as well as identifying the plot sold

by giving the details of the property situated on all four directions. Thereafter, he sold yet another plot measuring 30 feet x 60 feet to Sh. Ghanshyam on 27.10.2003, again specified plot identified by the properties situated on all the four directions. Fourth sale deed executed by him in favour of Satender on 09.06.2004 again plot measuring 60 feet x 60 feet identified by the properties situated on all the four directions. Suresh Kumar, purchaser of the sale deed dated 20.06.2003 has instituted this suit for permanent injunction claiming that he is owner in possession of plot measuring 62 feet x 60 feet pursuant to the sale deed dated 20.06.2003.

Defendant-Murari Lal who had purchased the property 11 days before the sale deed in favour of Suresh Kumar claimed that he is prior purchaser and, therefore, has a superior right.

There is no dispute on this aspect. However, learned Appellate Court has held that on the purchase of the property, everyone became co-sharer with Naurang. This was neither the case pleaded nor there was any issue. It is well settled that if an individual owner sells the property identified by boundaries and size, such purchaser does not become co-owner with the vendor. Still further, area in dispute is residential property and all the transactions are sale of identified plot identified through length and breadth of the plots as well as details of the properties situated on all the four directions. No doubt, the rights of Suresh would be subservient to Murari Lal, however, if Suresh is able to establish that he has purchased a different property, his rights cannot be taken away.

Keeping in view the aforesaid facts, the judgment passed by the Appellate Court is set aside. Case is remitted back to the First Appellate

Court to re-decide the suit after carefully examining each of the four sale deeds with reference to the lay out plan attached with each of the sale deed. The Court would also grant opportunity to the plaintiff to prove the sale deed in his favour which has not been exhibited in evidence.

In view of the above, the present Regular Second Appeal is disposed of.

Parties through their counsel are directed to appear before the First Appellate Court on 03.04.2019.

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

13.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No