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

**RSA-1910-2017 (O&M)
Date of decision : 27.02.2019**

Subhash Jain

... Appellant

Versus

Rajesh Kumar and another

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Sumit Sangwan, Advocate
for the respondents-caveators.

AMIT RAWAL, J. (ORAL)

CM-4601-C-2017

For the reasons stated in the application, the delay of 10 days in
refiling the appeal is condoned.

CM stands disposed of.

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The appellant-plaintiff is in the present regular second appeal
against the concurrent findings of fact, whereby the suit for declaration by
laying challenge to the sale deed dated 25.03.2004, executed by defendant
No.2 in favour of defendant No.1, in respect of suit property measuring 102
sq. yds., possession and damages to the extent of ₹2 Lacs for demolition of
the disputed properties, has been dismissed by the trial Court and affirmed
in appeal.

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The plaintiff-appellant Subhash Jain assailed the
aforementioned sale deed, by giving the descriptions as under:-

*East : House Pukhta Chunni Lal Bansal etc. joint wall
51' -0'*

*West: House Pukhta Hari Parkash son of Banarsi Dass
joint wall 51' – 0'*

*North: House of Pukhta Akhil Kumar son of Hari Parkash
joint wall 18' -0 '*

*Sought: Delhi Road @ Jeewan Singh Jain Marg Mori
Parnala 18' – 0'.*

on the premise that his father was owner in possession of the
suit property, by virtue of the decree dated 12.08.1989 in a Civil Suit
No.662 of 12.08.1989 titled as “Hari Dass Jain V/s Rambai”. The suit
property was allocated the number, as 321, situated in ward No.4, Charkhi
Dadri and in view of the registered Will dated 22.11.2002, inherited the
property. It was alleged that defendant No.2 instituted the suit bearing
No.291 titled as “Devdender V/s Sanjay etc.” regarding suit property, which
was dismissed by the Court below on 07.03.2001 and various other suits,
wherein the description of the property was given as South : House of
Rambai. In fact, the sale deed pertained to the house of Rambai, therefore,
cause of action accrued to the plaintiff to the file the suit, as his father had
already acquired the title by virtue of the decree of 1989.

The suit was contested by defendant No.1 only as defendant
No.2 was proceeded ex parte. It was alleged that the judgment and decree
in Civil Suit No.662, was illegal, null and void and not binding as it
required registration as Hari Dass Jain had no pre-existing rights. In fact,
defendant No.1 became the owner in the property left by deceased Lal
Chand, by virtue of the sale deed dated 25.03.2004.

Since the parties were at variance, the trial Court framed the

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following issues:-

1. *Whether sale deed No.5568 dated 25.03.2000 executed by defendant No.1 in favour of defendant No.2 is illegal, null and void, ab initio, result of fraud and by misrepresentation and thus liable to be set aside? OPP*
2. *Whether plaintiff being legal heir of Hari Dass is owner in possession of property in question? OPP*
3. *Whether if above issues proved, then plaintiff is entitled to decree of declaration with consequential relief of permanent injunction as prayed for? OPP*
4. *Whether present suit is not maintainable in the present form ? OPD*
5. *Whether plaintiff has no locus standi to file the present suit? OPD*
6. *Whether defendant No.2 is bona fide purchaser for valuable consideration of suit property? OPD*
7. *Relief.*

The plaintiff in support of the aforementioned pleadings examined 13 witnesses i.e. Registry Clerk, Draftsman, Expert etc., and brought on record various documents. On the other hand, the defendants examined 15 witnesses and tendered in evidence many documents i.e. gift deeds, sale deeds, electricity bills, extract of register, report of the Local Commissioner.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have abdicated in not noticing the identity of the property as Davinder Kumar, in various civil litigations, described hereinbelow, had conceded that the suit land measuring 102 sq. yds, was owned by Rambai.

(i) Civil Suit No.291 instituted on 07.05.1990 (decided on 07.03.2001) in the case titled Devender Kumar V/s Sanjay

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Gupta in Para No.3 of the plaint, it has been conceded by Sh. Devender Kumar that Smt. Rambai is owner in possession of a house measuring 102 sq. yards (Document Ex.PW5/A7).

The above suit was filed by Sh. Devender Kumar seeking a decree of declaration that he is owner in possession of the house measuring 102 Sq. Yards. The suit was contested on merits and was dismissed vide judgment dated 07.03.2001, Ex.PW-5/A-8 and decree Ex.PW-5/A-9.

(ii) Vide Registered Sale Deed dated 11.03.1998, the respondent No.2 Devender Kumar sold a property measuring 102 Sq. Yards to Akhil Kumara and in the description of the property, on the Southern side, it was mentioned as House of Rambai widow of Matu Ram 18'. This document is duly exhibited as Ex.PW4/A.

iii) Sh. Akhil Kumar filed a Rent Petition dated 07.03.2001 against the tenants M/s Ram Saroop Suresh Kumar and in this petition, once again, in the description of the property, it was mentioned that on the Southern side of the property there is a house of Smt. Rambai Wd/o Sh. Matu Ram 18'. The document is exhibited as Ex.PW5/A-16 and the orders of the Rent Controller dated 14.01.2003 as Ex.PW-5/A-17.

(iv) A Civil suit No.820 was instituted on 03.08.1987 titled Devender Kumar Gupta V/s Smt. Rambai which was decided on 15.06.1993 and in the said civil suit exhibited as Ex.PW5/A-10. At point 'D', there is mention of the factum that on the South side of the property, there is demised house (pucca) of Smt. Rambai and vide judgment dated 15.06.1993, Ex.PW5/A-11, the suit was partly decreed. The decree dated 15.06.1993 was also exhibited as Ex.PW-5/A-12. In this judgment, it was held by the Civil Court that the property mentioned at Sr. No.'A', 'D' and 'E' is of respondent No.2 and rest of the properties do not belong to the respondent No.2. If boundaries of the properties mentioned at Sr. No.'D', is considered, it depicts that towards South of the property 'D', house of Smt.

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Rambai was situated. Thus, the house if admitted by respondent No.2 himself to be that of Smt. Rambai and this is, in fact, the demised suit property.

(v) The ADJ, Bhiwani dismissed the appeal filed by Rambai against the said judgment of the trial Court vide judgment and decree dated 30.09.1999 and a copy of the same were exhibited as Ex.PW-5/A-13 and Ex.PW-5/A-14."

In such circumstances, the sale deed, impugned, was without title, thus, did not have a binding effect. No doubt, the father of plaintiff acquired the title by virtue of the decree, which was not registered, equally so, the defendants also claimed to have acquired the right in a suit of 1987, resulting into, decree of 1993. Local Commissioner only established the possession of Rajesh Kumar, transferee of the impugned sale deed. The Courts below remained oblivious that the relief of possession was also sought, therefore, there is gross illegality and perversity.

I am afraid the aforementioned arguments are not sustainable in the eyes of law, for, reflection of the various suits/civil litigations, showing Rambai having owner of the house in South, subject matter of the decree of 1989, cannot confer the title and ownership, in favour of the plaintiff, being predecessor-in-interest of Hari Dass.

It is a matter of record that Davender Kumar had filed the civil suit of 1987 against Rambai. During the pendency of the suit, Rambai alleged to have suffered a decree in 1989, in favour of the father of the plaintiffs, but the first suit was also decreed in 1993, therefore, the alleged acquisition of title was, thus, hit by *doctrine akin to lis pendens*. Hari Chand did not have any pre-existing right, decree conferring the title, required registration, thus, the partition amongst Rambai with regard to

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the total area of 204 sq. yds, subject matter of the suit property, is warranted to. Both the Courts below have also negated the plea of the plaintiff giving observations hereinabove.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Ashwani Talwar, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

27.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**