

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

**RSA No. 2689 of 2017(O&M)
Date of Order: 02nd April, 2019**

Ram Chand (since deceased) through LR's and others

...Appellants

Versus

Smt. Somwati (since deceased) through LR's and others

...Respondents

RSA No.2924 of 2017(O&M)

Smt. Somoti

...Appellant

Versus

Smt. Somwati

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Adarsh Jain, Advocate
for the appellant(s)

Mr. S.K.Birla, Advocate
for the respondent(s)

ANIL KSHETARPAL, J.

This judgment shall disposed of Regular Second Appeal Nos.2689 and 2924 of 2017, both are arising from a suit filed for grant of decree for permanent injunction in which counter claim was filed by the defendants.

Defendants-appellants are in the regular second appeal against the findings of fact arrived at by the learned first appellate court reversing the judgment and decree passed by the trial court.

Plaintiff-respondent claims property which is a plot measuring 150 square yards on the basis of a registered sale deed executed in her favour by Sh. Sumera Singh, Har Govind and Prem Chand, both sons of Sumera Ram dated 16.05.1989. It is pleaded case of the plaintiff that the aforesaid plot having dimensions of 30'x45' is part of Plot nos.79-80. Plaintiff claimed that after the purchase she constructed one room, kitchen and bathroom in August, 2009.

On the other hands, defendant no2 claims that he purchased the property in dispute from Sheo Singh son of Rishal Singh vide sale deed dated 16.01.2009 and his vendor Sheo Singh had purchased the property from Dhan Singh son of Sumera Ram vide sale deed dated 10.10.2006.

On appreciation of the evidence, learned trial court dismissed the suit filed by the plaintiff while relying upon a report of local commissioner with respect to possession of defendant no.2 and decreed the counter claim filed by defendant no.2.

Two first appeals were filed, one by the plaintiff and second by the defendant. There was also a cross objections filed in the appeal filed by the plaintiff. All three were decided by the learned first appellate court after re-appreciation of the evidence and the learned first appellate court accepted the appeal filed by the plaintiff Somwati and passed a decree for permanent injunction against the respondents. Cross objections as also cross appeal were dismissed.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel appearing for the appellant has submitted that

the learned first appellate court has committed an error while returning a finding that since the report of local commissioner was not supplied to the party and objections were not invited, therefore, the judgment in appeal is wrong. He further submitted that predecessor of the plaintiff and defendant no.2 are common as plaintiff as well as defendant no.2 are claiming the property from the family of Sumera Singh. He submitted that family of Sumera Singh was having 63/320th share in the land measuring 8 kanals comprised in Rect. No. No.68, khasra no.24 as per the jamabandi for the year 2005-2006. Hence, he submitted that the sale in favour of defendant no.2 could not be set aside.

On the other hand, learned counsel appearing for the respondent had defended the judgment passed by the learned first appellate court.

As regards first argument of learned counsel, it may be noted that the learned first appellate court has discussed the report of the local commissioner and held that local commission had no jurisdiction to determine who is in possession. The learned first appellate court further found that the local commissioner had met 2-3 persons in the village and based its report thereon. As regards observation of the learned first appellate court that objections were not invited, to that extent, the finding of the first appellate court is erroneous, however, that would not render the entire judgment passed by the learned first appellate court to be incorrect. No doubt, the court is not required to invite objections against the report of the local commissioner. However, if any, objections are filed, the same are required to be decided. Reference in this regard can be made to a division bench judgment of the court passed in the case of **Balbir Dewan Cold**

Storage and General Mills vs. Naveen Chander 1989 AIR(Pb.),257.

As regard next argument of learned counsel for the appellant, it may be noted that the first appellate court has not set aside the sale deed in favour of defendant no.2. The court has merely granted decree for permanent injunction to the plaintiff. First appellate court has found that the property in question which was subject matter of sale in favour of the plaintiff and defendant no.2, is common. Such being the position, the defendant no.2 does not get any tight, title or interest in the plot in question.

As regards argument of learned counsel that everyone would become co-sharer, that can also not be accepted particularly in view of the fact that the property is part of a residential area and not agricultural land. Plot of specific size with dimensions have been sold through the sale deeds. Learned first appellate court has returned findings on the basis of evidence that plaintiff had constructed a small house which was demolished by the defendant no,2 in collusion with others. The aforesaid finding is on the basis of appreciation of evidence, not required to be interfered with.

As regards arguments of learned counsel for the appellant that the defendant no.2 has become owner , no such declaration can be granted particularly in view of the finding that the plot which has been sold is same.

Plaintiff being purchaser prior in point of time has a superior right. Once Sumera Singh, Har Govind and Prem Chand sons of Sumera Singh had sold the property, Dhan Singh, who is son of Sumera Singh had no right, title or interest in the property. However, if the defendant has any claim against his vendors, he shall be at liberty to lodge such claim. As regards findings of the first appellate court that the plaintiff is owner in possession of the property and her possession is required to be protected by

issuing a decree for permanent injunction, the same is upheld.

With these observations, both the appeals are dismissed.

02nd April, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No