

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. SAO No. 87 of 2014 (O&M)
Date of Decision: 08.04.2019**

Ram Gopal Singla through LRs Prabha Singla and others ...Appellant

VERSUS

Rajesh Kumar and others ...Respondents

2. SAO No. 3 of 2015 (O&M)

Ram Gopal Singla through LRs Prabha Singla and others ...Appellant

VERSUS

Faqir Chand and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Binderjit Singh, Advocate
for the appellant in all the appeals.

None for respondent no.1.

Mr. P.S. Rana, Advocate
for respondents no. 2 to 4.

SURINDER GUPTA, J.

The appellant filed civil suit seeking the relief as follows:-

“Suit for declaration to the effect that plaintiff is owner of plot no. 78, measuring 500 sq. yards comprised in khasra no. 2112 situated near Green Place, Phase IV of the Shakti Vihar Co-operative Housing Building Society, Bathinda and defendants no. 1 to 4 have no concern with the said plot no. 78, shown in red colour in the attached site plan; and

Suit for declaration to the effect that:

(a) Sale deed no. 7658 dated 8.1.2003 executed by

Rajesh Kumar defendant no. 1 in favour of Faqir Chand defendant no. 2 with regard to plot no. 75 measuring 50'X90' giving wrong dimensions of the plot;

(b) Sale deed no. 1153 dated 6.5.2003 executed by Faqir Chand defendant no. 2 with regard to plot measuring 150 sq. yards measuring 50'X27' out of plot measuring 500 sq. yards allegedly purchased by defendant no. 2 from defendant no. 1 vide sale deed dated 8.1.2003 in favour of defendant no. 3; and

(c) Sale deed no.640 dated 23.4.2003 executed by Faqir Chand defendant no. 2 in favour of Inder Sain son of Ram Parshad, defendant no. 4 with regard to plot measuring 200 sq. yards (50'X36') out of plot measuring 500 sq. yards allegedly purchased by defendant no. 2 from the defendant no. 1 vide sale deed dated 8.1.2003;

are illegal, null, void and ineffective as against the rights of the plaintiff and the same has been result of fraud played by defendants no. 1 to 4 in connivance with defendant nos. 5 and 6 with an intention to grab plot no. 78 of the plaintiff.

And

Suit for possession of plot no. 78, shown in red colour in the attached site plan, situated near

Green Place, Phase-IV of the Shakti Vihar Co-operative House Building Society, Bathinda, which is bounded as under:-

East : Plot no. 79

West : Plot no. 77

North : Street

South : Plot no. 93.

And suit for permanent injunction for restraining the defendants no. 1 to 4 from raising any further construction on plot no. 78 of the plaintiff.”

2. Learned Civil Judge (Sr. Division), Bathinda decreed the suit of plaintiff in following terms:-

“.....the suit of the plaintiff is decreed with costs for declaration that the plaintiff Ram Gopal Singla is owner of plot no. 78 and the sale deeds no. 7658 dated 8.1.2003 executed by the defendants no.1 in favour of the defendant no. 2 Faqir Chand, sale deed no. 1153 dated 6.5.2003 executed by the defendant no. 2 in faovur of defendant no. 3 Darshan Singh for plot measuring 150 sq. yards and sale deed no. 640 dated 23.4.2003 executed by the defendant no. 2 in favour of the defendant no. 4 Inder Sain with regard to plot measuring 200 sq. yards are illegal, null and void and in effective qua the plaintiff and the plaintiff is entitled to possession of plot no. 78. The defendants no. 1 to 4 are restrained from raising further construction.”

3. In appeal filed by Faqir Chand, Darshan Singh and Inder Sain

against judgment and decree of trial Court, case was remanded by Ist Appellate Court directing the lower Court to decide objections to report of Local Commissioner filed by defendants. Order of learned lower Appellate Court remanding the case reads as follows:-

“.....Under these circumstances it would have been apt for the court to examine the Local Commissioner with regard to the matter objecting his report to elicit the truth. Since the only point in dispute relates to the identification of the plot in dispute which can only be decided on the basis of the report of Local Commissioner who has to carry out the demarcation in accordance with the instructions contained in Hon'ble Punjab and Haryana High Court Rules and Orders, Volume I. This Court has left with no other alternative but to set aside the judgment and decree of learned trial Court and to remit the case, with directions to appoint a Local Commissioner, to demarcate the site in dispute and on receipt of report permit the parties to take such objections, if any, to the report of Local Commissioner....”

4. It is a case, which relates to plot numbers as per lay out plan of Shakti Vihar Co-operative Housing Building Society, Bathinda. During course of arguments, learned counsel for appellant in both the appeals has shown me copy of lay out plan, placed on file, which shows that plot nos. 75 and 78 separately exist at the spot. They are not even adjoining or in the same lane. Plot no. 75 is on western side of plot no. 78 and in between there is a 20 ft. street. It has also been pointed out that both the parties are not disputing the allotment of plot nos. 75 and 78 respectively by the Society.

5. Ist Appellate Court on the basis of evidence has recorded findings in paras 44 and 45 of its judgment as follows:-

“44. Ex. PX/1 bears the signatures of Madan Lal. The society, defendant no. 5 admitted that this is the original site plan; on the basis of which plots were allotted and as per this site plan the disputed plot is plot no. 78. The defendants have not brought on record any evidence to rebut this fact. The defendants no. 2 to 4 who appeared as their own witnesses have admitted that the park was also left in the site plan. But no such park is shown in Mark D1, the site plan brought on record by them. To the contrary Ex. PX/1 as admitted by the society witness DW3 shows the park in existence in Ex. PX/1 in the centre. DW1 has himself admitted the site plan Ex. PX/1 and this site plan shows plot no. 75 to be across the street. Hence, it has apparently been proved on the record that plot in dispute is plot no. 78 and not plot no. 75.

45. The defendants no. 2 to 4 cannot be said to be bonafide purchasers; once Faqir Chand, defendant no. 2, who allegedly purchased the plot no. 75 from the defendant no. 1 admits that 'he made no inquiry from the society before the purchase of the property'. The defendants have also not brought on record the site plan allegedly got sanctioned by them from the Municipal Corporation before the construction; which would have supported

their case. No boundaries of plot no. 75 allegedly purchased by the defendant no. 2 have been proved whereas to the contrary the sale deeds of the other allottees of the adjacent and neighbouring plots brought on record by the plaintiff reflected the boundaries of plot no. 78. Hence, the plot in dispute is plot no.78 and not plot no.75 and the sale deeds executed by the defendant no. 1 in favour of the defendant no. 2 and thereafter by the defendant no. 2 in favour of the defendant no. 3 and 4 giving boundaries of the plot no. 78 and hadning over possession of plot no. 78 cannot be said to be legal and valid and the plaintiff is entitled to the possession of plot which has been illegally taken from him.....”

6. Above findings were recorded by Ist Appellate Court on the basis of evidence on record. It is not a dispute of adjoining plots or of encroachment over a plot. Plaintiff is alleging that he was allotted plot no. 78, a fact not disputed. The society, which allotted the plot, is proving location of plot no. 78. Defendant no. 1 was also allotted plot no. 75 and location of that plot is also depicted in lay out plan. It is not a case where both the parties are laying their claim over same plot. The most important document in this case is lay out plan to refer to location of plot nos. 75 and 78. Learned Ist Appellate Court has given direction to examine Local Commissioner with regard to his report and also with direction to Local Commissioner to carry out demarcation in accordance with instructions as contained in Punjab and Haryana High Court Rules and Orders, Volume I.

7. When ample evidence is already available on record, Ist

Appellate Court could proceed to decide the case on its own. In the event of any assistance of Local Commissioner is required, Ist Appellate Court is all competent to call for the report of Local Commissioner with specific direction after looking into the fact that location of plot is separately given in the lay out plan produced on file. The order of Ist Appellate Court remanding the case is not as per scope and spirit of provisions of Order XLI Rule 23, 23A or 25 CPC, as such, are not legally sustainable.

8. As a sequel of my above discussion, both the appeals are accepted. Parties are directed to appear before Additional District Judge/successor Court, Bathinda on 06.05.2019, on which date, files of both the appeals shall be taken on board and proceeded further in accordance with law. It is, however, made clear that nothing observed in this order shall be taken as decision or observation on any aspect, which is subject matter of the appeals, before Ist Appellate Court or influence decision of Ist Appellate Court.

April 08, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No