

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

CR-2553-2013 (O&M)
Date of decision : 12.03.2020

Surjit Kaur

...Petitioner

Versus

Rajinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aalok Jagga, Advocate for the petitioner.

Mr. Chandandeep Singh, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

A reading of the impugned orders Annexures P-10 and P-14 shows that the Court as well as parties have failed to address the issue in proper prospective.

The plaintiff-petitioner has filed the present suit with following caption:-

“Suit for decree of declaration to the effect that the sale deed bearing Vasika No.46 dated 4.4.2000 executed by the defendant No.1 in favour of defendant No.2, pertaining to the house/plot No.74, measuring 100 sq. yards comprised in Khata No.1998/2351 to 2353, Khasra No.511/2715/663, as per the jamabandi for the year 1996-97 situated at Preet Vihar, Taraf Peeru Banda Tehsil and District Ludhiana is illegal, void, unconstitutional, act of misrepresentation, fraud and is not binding on the rights of the plaintiff and is liable to

be set aside.

AND

Suit for possession of plot/house No.74, measuring 100 sq. yards comprised in Khata No.1998/2351 to 2353, Khasra No.511/2715/663, as per the jamabandi for the year 1996-97, as shown red in the plaint attached and bounded as under:-

East: Plot No.73

West: Plot No.75

North: Street

South: Plot No.127-127

situated at Preet Vihar, Taraf Peeru Banda Tehsil and District Ludhiana

AND

Suit for permanent injunction restraining the defendants from alienating or changing the existing nature of the above referred property in any manner whatsoever, on the basis of oral and documentary evidence.”

There are three defendants in the suit. The plaintiff claims that defendant No.1 through his attorney defendant No.3 sold the property to the plaintiff on 04.01.2000. The plaintiff further claims that subsequently defendant No.1 has sold some part of the property in favour of defendant No.2 on 04.04.2000. In substance, the plaintiff claims that the sale deed dated 04.04.2000 does not affect her rights. In the suit, defendant No.1 was proceeded against ex parte whereas mainly defendant No.2 contested the suit. The plaintiff closed her evidence on 12.01.2010. Thereafter, defendant No.1 filed an application for setting aside ex parte proceedings which was allowed as the plaintiff gave no objection thereto on 04.11.2010. Thus, the suit stood restored to its original position i.e. on the day the defendant was proceeded against ex parte. Defendant No.1 thereafter, filed a written statement on

08.03.2011. The parties as also the Court did not follow the procedure. Once, the ex parte proceedings were set aside and the suit was restored to its original position on the day when defendant No.1 was proceeded against ex parte. He was also granted an opportunity to file written statement. Hence, it was incumbent upon the Court to grant an opportunity to the plaintiff to lead evidence because the opportunity was also required to be given to the counsel representing defendant No.1 to cross-examine which was never granted. The plaintiff filed an application for additional evidence and thereafter, an application was filed for permission to lead rebuttal evidence which has been dismissed by the Court.

In the considered view of this Court, once the plaintiff was required to be granted an opportunity to lead fresh evidence after defendant No.1 was granted an opportunity to file written statement. Therefore, both the orders passed are erroneous. Hence, orders under challenge are set aside. Learned trial Court is requested to proceed with the suit in accordance with law.

Accordingly, the present revision petition is allowed.

Keeping in view the fact that the suit was instituted in the year 2004, learned trial Court is requested to make a sincere endeavour for expeditious disposal thereof.

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

12.03.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**