

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

RSA-1983-1998 (O&M)

Date of decision : 28.01.2020

Satya Narain (since deceased) through his LRs

...Appellant(s)

Versus

Smt. Rewati Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. Ajay Jain, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Defendant No.5-appellant is in the Regular Second Appeal against the judgments passed by the trial Court, affirmed in appeal by the First Appellate Court while deciding a suit for grant of permanent injunction restraining the defendants from interfering in possession of plot measuring 10' x 150 feet'.

Some facts are required to be noticed.

The plaintiff-Smt. Rewati Devi filed a suit claiming that she has purchased the plot in question vide a registered sale deed dated 09.12.1985 from Ramesh Chander and thereafter she has been using the property as a owner and the defendants want to encroach upon the plot.

Defendant Nos.1 and 5 contested the suit and pleaded that the plaintiff was neither the owner nor in possession of the suit property.

Learned trial Court, decreed the suit while relying upon sale deed as well as site plan in favour of the plaintiff and thus restrained the defendants from interfering in possession of the property.

First appeal was preferred by defendant Nos.1 and 5. During the pendency of the first appeal, an application under Order 41 Rule 27 CPC for permission to lead additional evidence was filed. Defendant Nos.1 and 5 wanted to place on file a copy of the layout plan alongwith various sale deeds executed by various vendees pertaining to plots in same khasra number. Through the application, applicant wanted to prove that piece of land purchased by the plaintiff, in fact, does not exist. As noted above, the plaintiff claims that she has purchased the property vide sale deed dated 09.12.1985 from Ramesh Chander. First sale deed by Ramesh Chander in favour of Umrao etc. is dated 21.02.1979. Defendant No.5-appellant is said to have purchased the suit property from the aforesaid Umrao etc. vide sale deed dated 16.05.1985. Ramesh Chander, the same vendor, had also executed a sale deed dated 26.11.1979 in favour of Mahavir Prashad. Ramesh, the vendor, had also sold a part of the property situated in the same khasra number to Panna Lal etc. on 04.05.1981. Ramesh Chander had also sold one piece of plot to Sunil etc. on 21.04.1984 which in turn was sold to Madan Lal. All these sale deeds are pertaining to the land situated in abadi of the village.

Learned First Appellate Court, dismissed the application for permission to lead additional evidence on the ground that defendant Nos.1 and 5 in their written statement had not pleaded that they had also purchased the property from Ramesh Chander.

This Court has heard the arguments of learned counsel for the parties and examined the record.

In the considered view of this Court, learned First Appellate Court has taken a very narrow view of the matter. The defendants, while filing the written statement had pleaded that the plaintiff is neither owner nor in possession of the property on the basis of the alleged sale deed. The plaintiff had only filed a suit for injunction. However, issue No.1 framed by the Court is to the following effect "whether the plaintiff is owner in possession of the plot in dispute as alleged in the plaint?OPP".

In view of the aforesaid, the suit was a suit based on title. The Court was expected to grant declaration that the plaintiff is owner in possession of the plot in question. Ramesh Chander has sold various pieces of land to various vendees. In such circumstances, the learned First Appellate Court ought to have allowed the application for additional evidence enabling it to examine the case constructively. Order 41 Rule 27 CPC provides that the application for additional evidence can be allowed by the Court if it requires the additional evidence to enable it to pronounce judgment or for any other substantial cause. Order 41 Rule 27 CPC enables the Court to allow permission to lead additional evidence in three different eventualities. The Courts are here to do substantive justice between the parties. The sale deed in favour of defendant-appellant is of 16.05.1985, however, defendant is driving title from Umrao etc. who was the first vendee from Ramesh Chander. Thus, the rights of the defendant No.5 were also required to be adjudicated upon.

In these circumstances, learned First Appellate Court has erred

in dismissing the application for additional evidence. Hence, the judgment passed by the First Appellate Court is set aside. The application for additional evidence is allowed. The defendant-appellant shall be given an opportunity to prove the documents sought to be led in additional evidence. Apart from the layout plan, remaining documents are copies of the registered sale deeds. Learned First Appellate Court would also examine as to whether it would be necessary to appoint a Local Commissioner (a revenue official) to get a layout of the entire khasra number, prepared from an experience revenue official enabling it to adjudicate the dispute in appropriate manner.

Hence, the present Regular Second Appeal is allowed. Case is remitted back to the learned First Appellate Court.

Parties through their counsels are directed to appear before the learned First Appellate Court on 19.02.2020.

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

28.01.2020*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**