

Sr. No.238

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

**RSA No.2736 of 2013 (O&M)
Date of Decision: 13.02.2020**

Ashok Kumar and another

... Appellants

Versus

Satinder Pal Singh Bhullar and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- None for appellants No.1 and 2.

Mr. N.K.Suneja, Advocate,
for appellant No.3.

Mr. Amit Jain, Advocate,
for respondents No.1 and 2.

ARUN MONGA, J.

CM No.3202-C of 2018

For the reasons stated in the application and also in view of learned counsel for respondents No.1 and 2 not opposing the same, the prayer for transposing the proforma respondent No.4 as co-appellant in the present second appeal is allowed.

The proforma respondent No.4 is transposed as an appellant No.3.

Registry is directed to amend the memo of parties accordingly.

Main case

1. The defendant/appellants herein having suffered

adverse findings by the two Courts below have filed the present second appeal assailing the judgments and decrees of the trial Court whereby suit of the plaintiff seeking partition of the suit property to the extent of $\frac{1}{2}$ share in House No.2109, Sector 15-C, Chandigarh by metes and bounds was decreed and the same was upheld by First Appellate Court.

2. Brief facts as adumbrated by the First Appellate Court are that plaintiffs filed a suit seeking partition of House No.2109, Sector 15-C, Chandigarh by metes and bounds to the extent of half share alleging that the house in dispute was originally owned by Smt. Veeran Devi and Gopal Dass Mahajan. The latter was owner of half share of the house in dispute. He sold his share to Balwinder Singh and Jasbrinder Ahluwalia vide registered sale deed dated 03.07.1989 and also handed over the possession of the half portion to the purchasers. The Estate Officer vide letter No.12017 RP No.5978 dated 07.05.1996 transferred the share of Gopal Dass i.e. half share of the house in dispute in the name of Balwinder Singh and Jasbrinder Ahluwalia. After purchase, they (Balwinder Singh and Jasbrinder Singh) sold their half share of the house in dispute to the plaintiffs vide registered sale deed dated 18.10.1995 and then handed over the possession to the plaintiffs. Since then the plaintiffs are in possession of the half share of the house in dispute. The same has been transferred in their favour by the Estate Officer, U.T., Chandigarh vide letter No.12019 RP No.5978 dated 07.05.1996. It was further pleaded that Smt. Veeran Devi wife of Lal Chand who was owner of remaining half share of the house in

dispute died and the defendants are her Class-I heirs.

3. The construction of the house in dispute is very old and the plaintiffs want addition and alteration according to their needs, but the construction can only be raised after the passing of the building plan/map by the Estate Officer, U.T., Chandigarh. For this, the signatures of all the owners are required on the map and the other documents. The plaintiffs requested the defendants to sign the building plan so that the necessary approval may be taken from the competent authority but the defendants have flatly refused to sign the same. Thus, the necessity of filing the suit for partition had arisen.

4. Defendants pleaded that in a family settlement, Gopal Dass had relinquished his half share in the suit proposal in favour of their mother Smt. Veeran Devi, wife of Lal Chand, elder brother of Gopal Dass. Thus, the latter (Gopal Dass) was not left with any right in the suit property. Sale deed dated 03.07.1989 executed by Gopal Dass did not pass any title to Balwinder Singh and Mrs. Jasbrinder Ahluwalia. The latter themselves had no title and thus could/did not pass any title to the plaintiffs under sale deed dated 18.10.1995. Further, at the relevant time the property was under resumption and vested in the Estate Officer. The plaintiffs were trespassers. Partition/diversion of immovable property is barred under the capital of Punjab (Development and Regulation) Act, 1952. Some other legal objections were also taken.

5. Based on the rival pleadings of the parties, following issues were framed:-

1. *Whether the plaintiff is entitled to the partition of the property in question, if so, to what extent of the share?OPP*
2. *Whether the suit of the plaintiff is maintainable in the present form?OPP*
3. *What facts of the plaint having been filed in accordance with the provisions of the amended CPC? OPD*
4. *Whether the property has been resumed and ownership vested in favour of the Chandigarh Administration, if so, it effects on the present suit? OPD*
5. *Whether the sale deed executed by Gopal Dass to Balwinder Singh and Smt. Jasbrinder Ahluwalia are forged and fabricated documents as a result of fraud, if so, it effects on the suit?OPD*

6. On appraisal of evidence adduced by the parties, the trial Court decreed the suit of the plaintiff seeking partition of the suit property to the extent of $\frac{1}{2}$ share in House No.2109, Sector 15-C, Chandigarh by metes and bound. First Appellate Court upheld the same and dismissed the appellant's appeal. Hence, the present Regular Second Appeal before this Court.

7. Having heard learned counsel for the parties and for the reasons stated hereinafter, this Court is of the view that this second appeal filed by the appellants and supported by proforma respondent No.4 later transposed as co-appellant is bereft of any merit and is thus liable to be dismissed.

8. The contention of the learned counsel for the appellants to seek setting aside all the judgments and decrees passed by the Courts below *inter alia*, is that Gopal Dass had

relinquished his $\frac{1}{2}$ share in the property in question in favour of Veeran Devi. Therefore, he had no right to sell the property to Balwinder Singh and Mrs. Jasbrinder Ahluwalia from whom respondents No.1 and 2/plaintiffs had bought the $\frac{1}{2}$ share. The second contention is that since the property in question was under resumption, the sale deed from Gopal Dass in favour of the vendees could not have been executed and the same was null and void. Thirdly, the house in question could not have been partitioned as per the rules applicable in Chandigarh and no public auction could thus take place. It is contended that both the Courts below have acted illegally and decreed the suit filed by respondent Nos.1 and 2/plaintiff by wrongly rejecting all the pleas taken by the present appellants.

9. I am unable to persuade myself to accept these contentions. As regards the relinquishment deed/family settlement dated 04.12.1954 (Ex.D-3), allegedly executed between Gopal Dass and Veeran Devi in the year 1954, firstly; the same being unregistered did not extinguish the ownership of Gopal Dass, secondly; it was not acted upon, thirdly and lastly; it had been retracted by Gopal Dass as evident from order dated 05.02.1996 passed by the Estate Officer, Chandigarh. Resultantly, Gopal Dass was the owner of $\frac{1}{2}$ share in the house, when he sold the same to Balwinder Singh and Mrs. Jasbrinder Ahluwalia. The appellants and respondent No.4 (who later sought transposition as an appellant) neither filed any civil suit for declaration, making any claim on the basis of the family settlement and the relinquishment

deed nor ever challenged the said sale deed during the lifetime of Gopal Dass or Veeran Devi. Even otherwise, the appellants failed to establish any settlement or relinquishment by leading any cogent or to bring anything on record as to what property if any did Gopal Dass get by way of the family settlement.

10. The second plea of the appellants that in the year 1989 when the property was under resumption, the sale could not be made by Gopal Dass, is also liable to be rejected. It is settled law that till the time the resumption proceedings attain finality a person remains the owner of his property and can sell/deal with it in whichever way he wants. Also it came in evidence that, in fact, the resumption proceedings were later set aside, vide order dated 18.04.1995 (Ex. D-5). The conveyance deed dated 31.08.1963 issued by the Estate Office executed jointly in favour of Gopal Dass and Veeran Devi is also on record. The first sale deed dated 03.07.1989 Ex P-1 between Gopal Dass (seller) and Balwinder Singh and Jasbrinder Kaur (buyer) were rightly by both the Courts below held to be perfectly valid and duly executed sale deeds. In this regard, reliance may be had on a decision of this Court in ***Vidya Sagar Vs. Punjab State Warehousing Corp. 2002 (4) RCR (Civil) 519*** and also another case cited as ***Pritibha Jhangi Vs. Devinder Kumar Singla, 2010 (3) RCR (Civil) 649.***

11. Furthermore, it would also be pertinent to note that in multiple rounds of earlier litigation inter se the same parties/their predecessor in interest the Courts have already held Gopal Dass

to be the owner of 50% share of house in question. All such similar pleas as are being raised by the appellants in the instant appeal were also raised, had been dealt with and rejected in the earlier rounds of litigation by the Courts. Same are detailed as below:

i) Civil Suit filed by the plaintiff respondents decreed by Civil Judge (Jr. Division) vide order dated 29.09.2000 (Ex.P-5) wherein the relevant findings are thus:

“19. X X X X X

In these circumstances for the above discussed factors it can very safely be held that Gopal Dass being co-owner of the property in dispute on the basis of the conveyance deed Ex.PW-1/2 sold his share to earlier plaintiff of present case namely Balwinder Singh and Jasbrinder Ahluwalia which further sold the same to the present plaintiffs Satinder Pal Singh Bhullar and Satinder Kaur vide sale deed Ex.PW-1/5 and since sale by said Gopal Dass in favour of the earlier plaintiff Balwinder Singh and Jasbrinder Ahluwalia remained unchallenged by Veeran Devi, it is obvious that now defendants cannot be heard saying that the sale deed in favour of the present plaintiffs Satinder Pal Singh Bhullar and Satinder Kaur is not valid one or does not confer any title on them with regard to the portion of the property in dispute. The plaintiffs are owners of the portion of the property in dispute by dint of sale deed Ex.PW-1/5.”

ii) First Appeal against the above trial Court order filed by all

the legal heirs of Veeran Devi (including the appellants and Respondent No.4) was dismissed by giving detailed reasoning vide judgment/order dated 26.10.2005 (Ex.P-6). The relevant findings therein, inter-alia, are:

“14. The over whelming evidence led on the file establishes that Gopal Dass was co-owner of the suit property to the extent of $\frac{1}{2}$ share and the defendants/appellants have miserably failed to prove that Gopal Dass ever relinquished or transferred his $\frac{1}{2}$ share in the suit property in favour of the defendants/appellants. No infirmity can be found in his title to that extent. Gopal Dass had sold his share in the suit property to Balwinder Singh and Jasbrinder Kaur Ahluwalia who in turn sold it to the present plaintiffs/respondents vide sale deed.

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17. Mark 'A' and Mark 'B' copies of a family settlement alleged arrived at between Gopal Dass, Lal Chand and Nandi on 04.12.1954 cannot be of any help to the plaintiff because the suit property was purchased much afterwards and could not have been subject after of this family settlement which is even otherwise, also not proved in accordance with law. The learned trial Court has not as it could have not upset the order of eviction dated 06.10.1988 and 08.03.1988 in any manner but for holding that in execution of these orders only a symbolic

possession can be delivered to Veeran Devi and others and actual possession of the plaintiff cannot be disturbed in the course of execution of those orders. I concur with these findings of the learned trial Court as the plaintiffs who are admitted to be in possession of the suit property are also proved of being its co-owners.

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19. For all that has been discussed above, the findings of the learned trial Court on all of the issues are affirmed. The appeal is found without merit and ordered to be dismissed with costs. Counsel fee is assessed as Rs.500/-. Decree sheet be drawn accordingly. File be consigned to the records after due compilation.”

To be noted that the above trial Court judgment dated 29.09.2000 and the appellate Court judgment dated 26.10.2005 decided in favour of the answering respondents No.1 and 2 have since attained finality, as the appellants never challenged the same.

iii) Another case filed by Veeran Devi against the tenant (Devi Dass) was decided vide judgment/order dated 26.08.1993 by Rent Controller (Ex.P-7) wherein it is also held that Gopal Dass is owner of $\frac{1}{2}$ share. The relevant findings are reproduced herein below:

“10. To my mind once it is proved that Sh. Gopal Dass is co-owner of the house in question, he is also a co-landlord. He has right over every inch of the house,

therefore, there is nothing bad in his taking possession of the premises. Similarly he has right to receive rent from the tenants. The plaintiff has failed to show that only she was entitled to receive rent from the defendant. Therefore, the dispute is inter-se the landlord/co-owners but the defendant has been dragged in the controversy unnecessarily. Merely because in the rent petition filed by the plaintiff the defendant has been tendering rent in favour of the plaintiff it does not mean that only plaintiff is entitled to receive rent to the exclusion of Sh. Gopal Dass.

11. In view of above discussion the plaintiff has failed to prove that the defendant is in possession of the premises and that he is liable to pay the arrears of the rent. Accordingly there is nothing due from the defendant. This issue is therefore, decided in favour of the defendant and against the plaintiff.”

iv. Civil Revision 3540 of 2002 filed before this Court assailing above trial Court order was decided in favour of respondent No.1 and 2 vide order dated 01.07.2013. Civil revision filed by the LRs of the Veeran Devi was in fact dismissed with exemplary cost. Speaking for this Court my learned brother K. Kanan, Judge (as he then was) observed as below:-

“XXXXXX

iii) Examination of claim to title by 3rd party-effect of judgments not inter parties.

8. *If we must examine whether third parties were having a right to object, then it is borne out through records that there had been a suit originally at the instance of Balwinder (Purchaser from Gopal Dass) for an injunction against Veeran Devi (Decree holder) in the year 1989. A written statement has been filed by Veeran Devi which is read to me in Court that states that judgment debtor was not in possession of the property at all and that she has taken possession of whole of the property at all and that she has taken possession of whole of the property and only subsequent to the purchase by Balwinder, he was attempting to forcibly enter upon the property. This truly gives a lie to the entire contentions of the decree holder that the judgment debtor delivered possession of the property to Gopal Dass (the contention that has been discussed in para 6 above) and, therefore, the Court which had originally rejected Gopal Dass's attempt to be impleaded as a party could not give yet another opportunity to Gopal Dass' purchaser to force his entry into the possession. On the other hand, it seems clear that the execution process itself was an attempt to secure a new right of enlarging her own entitlement to property more than what she has secured through an allotment and sale from the Chandigarh Administration. The letter of allotment and the deed of sale of the Chandigarh Administration to Veeran Devi and Gopal*

Dass have been filed as exhibits. It will be too late in the day for Veeran Devi or persons claiming under her to deny the effect of joint allotment and sale on favour of Veeran Devi and Gopal Dass and to contend that Gopal Dass has no right in the property. A dismissal of the petition for impleadment by Gopal Dass cannot foreclose an adjudication regarding title of Gopal Dass or his successor in interest. In an action for ejectment before the Rent Controller, the adjudication has to be necessarily only between a person claiming to be a landlord and a tenant. A third party intervention cannot be permitted at all. Consequently, if Gopal Dass had not been impleaded that cannot be used later when a third party was setting up his right to Gopal Dass and cause an obstruction by setting up title in such co-owner.

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11.x X X X

The presentation of the execution petition after losing out a half share to a co-owner is mala fide and an abuse of process of Court.'

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13. I have found the execution petition filed by the decree holder was itself not bona fide. She ought to have rested the case with an adjudication that clearly demonstrated her right to be confined only to a half share in the whole property. The civil revision petition is

vexatious and deserves to be dismissed. Counsels' fee for respondents Rs.10,000/- ; exemplary costs Rs.3500/- both to be borne by the revision petitioners.

14. The civil revision is dismissed on the above terms.

v. SLP No.20977 of 2013 filed by the LRs of Veeran Devi against the above revision order of this Court also dismissed vide order dated 17.01.2014.

12. The next contention that the property in question could not be partitioned and sold in public auction is also being noticed, only to be discarded. Section 2 and 3 of the Partition Act states that the sale by public auction is the last resort when the parties mutually fail to buy each other's shares and when partition of the property is not feasible. Of course, Rule 14 framed under Capital of Punjab (Development and Regulation) Act 1952 does not permit partition of a house or a building in Chandigarh. So, if the parties mutually fail to buy each other's share, then the only course available to the Court is that to put the property to a public auction and distribute the sale proceeds amongst the co-sharers as per their share. Similar view has been taken by this Court in Rakesh Sethi Vs. Subhash Sethi 2017 (3) PLR 554 and in Sh. Chander Parkash Malhotra Vs. Sh. R.B.S. Chahal, 1994(1) RCR (Rent)312.

13. The legal heirs of Veeran Devi (owner of half share) thus had no right to challenge the ownership of the respondent No.1 and 2 as they bought the other half share from the vendees of Gopal Dass. Thus no cause of action accrues in favour of the LRs of Veeran Devi to litigate against the answering respondents.

14. For the reasons recorded earlier and without repeating the same, I also do not find any force in the argument raised by Mr. N.K.Suneja, learned counsel for the transposed co-appellant defendant (earlier respondent No.4) that Gopal Dass had no authority to execute the sale deed in favour of Sh. Balwinder Singh and Smt. Jasbrinder Ahluwalia in the year 1989 as he had relinquished his rights in the property by document Ex.D-1 dated 04.12.1955 followed by an affidavit Ex. D-2. No transfer of the properties took place in favour of Veeran Devi based on these documents. Further, there is no force in the argument that the property in dispute was under resumption from 1988 to 1996 and therefore, Gopal Dass had no authority to sell the same in the year 1989.

15. In view of the discussion and the reasons aforesaid and also having perused the grounds of appeal filed herein, I am of the view that no worthy ground is made out warranting interference of this Court in present second appeal. In any case, the appellants, who had filed the second appeal taking the grounds contained therein seem to have reconciled with the judgments passed by the Courts below and given up the claim by not pursuing the present appeal. It is only the transposed appellant No.4 (Satish Kumar), who was defendant No.2 on whose behalf arguments were addressed which have been rejected for the foregoing reasons.

16. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to

disturb the concurrent findings of facts recorded by the Courts below.

- 17. Resultantly, this appeal is dismissed.
- 18. Pending application, if any, shall also stand disposed of.

13.02.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No