

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2350 of 2018 (O&M)

Date of Decision: 10.02.2020

Ajit Kumar

... Appellant(s)

Versus

Ram Parshad and Another

... Respondent(s)

AND

2. Regular Second Appeal No. 2529 of 2018 (O&M)

Surender Singh

... Appellant(s)

Versus

Ram Parshad and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Ajay Jain, Advocate
for the appellant (In RSA-2350-2018)
and respondent No.3 (In RSA-2529-2018).

Mr. Munish Jolly, Advocate
for the appellant (In RSA-2529-2018).

Mr. Ashish Yadav, Advocate
for the respondents (In RSA-2350-2018)
and respondents No.1 & 2 (In RSA-2529-2018).

Anil Kshetarpal, J.

By this judgment, Regular Second Appeal No. 2350 of 2018 and Regular Second Appeal No. 2529 of 2018 shall stand disposed of. Both the appeals are arising from common judgments passed by the trial Court and the first Appellate Court. Learned counsel for the parties are also agreed

that both the appeals can be disposed of by one judgment.

In the considered view of this Court, the question which this Court is called upon to answer is **“whether a previous judgment passed by the Court while declaring a sale deed to be without jurisdiction and not binding on the rights of the plaintiffs in the previous suit is qua the suit property involved in the previous suit or is itself sufficient to hold that the vendees have no right even with respect to an undisputed portion/part thereof”**.

In nutshell, the facts are that the plaintiff/appellant-Ajit Kumar, in Regular Second Appeal No. 2350 of 2018, purchased a plot measuring 255 square yards vide registered sale deed dated 14.03.1996 from Sujan Singh and Raghunath Singh sons of Hari Singh. As per sale deed, length and breadth of the plot was east to west 23 feet and north to south 100 feet. The description of the surrounding properties was given to identify the property. It was mentioned that on east, there are houses of Prabhu, Numberdar and Ghisa Ram. On west, there is a passage. On south, there is a property of Gobind Ram. Whereas on the north, there is house of Jai Narain. The sale deed is Ex.P4.

Ram Parshad and Hoshiyar Singh sons of Maha Ram filed a suit No. 277 of 1996 (hereinafter referred to as “previous suit”) for declaration and permanent injunction against Sujan Singh, Raghunath Singh and Ajit Kumar (appellant in Regular Second Appeal No. 2350 of 2018) claiming that they are owners in possession of the plot in dispute as detailed in para 1 of the plaint and sale deed No. 5970 dated 14.03.1996 is null and void and not binding on the rights of the plaintiffs with a consequential relief of

peaceful possession of the plaintiffs over the suit land. Along with the suit, a layout plan was filed according to which the disputed plot, over which Ram Parshad and Hoshiyar Singh claimed ownership and possession, was measuring 16'x50. From east to west, length of the plot in dispute was 16 feet, whereas from north to south, it was 50 feet. The previous suit filed by Ram Parshad and Hoshiyar Singh was decreed by the learned trial Court vide judgment & decree dated 22.07.2005 and it was held as under:-

“22. *In view of my findings under issues nos.1 and 2 the suit of the plaintiffs succeeds and is hereby decreed with costs to the effect that the plaintiffs are owners and in possession of the disputed plot and sale deed no. 5971 dated 14.3.1996 executed by defendants nos. 1 and 2 in favour of defendant no.3 is without jurisdiction and is not liable to the rights of the plaintiffs qua the plot in dispute and the defendants are restrained from interfering with the peaceful possession of the plaintiffs over the disputed plot.*

Decree-sheet be prepared accordingly. File be consigned to the record room”.

It will be noticed that there is a typographical error in the judgment as in place of “liable”, the word should be “binding”.

The aforesaid judgment passed by the learned Civil Judge (Senior Division), Rewari was upheld in the first appeal as well as in the second appeal.

The plaintiff/appellant, namely Ajit Kumar, the vendee of the sale deed, filed the present suit No. 257 dated 03.07.2010 for grant of decree

for permanent injunction while admitting that in the previous suit, filed by Ram Parshad and Hoshiyar Singh, half portion of the property purchased by him has been declared to be null and void, however, he is entitled to protect his possession and construct the remaining portion of the undisputed plot. On notice issued, the defendants contested the suit and pleaded that the sale deed in favour of the plaintiff has already been set aside and the defendants are owners in possession of the entire property. They claimed that the sale deed is forged and illegal.

Both the Courts below have concurrently recorded a finding that since in the previous suit, the sale deed has been declared to be illegal and without jurisdiction not binding on the rights of Ram Parshad and Hoshiyar Singh (the plaintiffs in the previous suit and the defendants herein), therefore, the plaintiff has no right.

That is how the present appeals have been filed.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the judgments passed by both the Courts below and the requisitioned record.

Learned counsel appearing for the appellant in Regular Second Appeal No. 2350 of 2018 has submitted that the plaintiff/appellant does not claim any right in the suit property involved in the suit No. 277 of 1996 measuring 16'x50'. He further submitted that if the layout plan produced by Ram Parshad and Hoshiyar Singh, in the suit No. 277 of 1996 is carefully perused, towards southern side of the property, the defendants (plaintiffs, in the previous suit) have themselves shown that the plot measuring 48'x16' is

Kumar, appellant. He, hence, submitted that the Courts have erred in dismissing the suit filed by Ajit Kumar.

On the other hand, learned counsel for the respondents has submitted that once the sale deed has been set aside, therefore, the suit has been correctly dismissed. He further submitted that the plaintiff has failed to prove that he is owner of the property in dispute. He further submitted that when the regular second appeal was decided by the High Court against the judgment dated 22.07.2005, the entire sale deed was declared to be illegal.

This Court has considered the arguments of learned counsel for the parties.

On careful reading of the judgment passed by the learned Civil Judge (Senior Division), Rewari dated 22.07.2005 in Civil Suit No. 277, concluding part whereof has been extracted above, it is apparent that the sale deed No. 5971 dated 14.03.1996 was not declared to be illegal and not binding on the rights of the plaintiffs in entirety. The significant words used by the Court are “qua the plot in dispute”. Since Ram Parshad and Hoshiyar Singh had filed the previous suit claiming their ownership and possession over the plot measuring 16'x50', therefore, the judgment passed by the Court has to be read in the aforesaid context. In other words, the sale deed dated 14.03.1996 shall not be binding on the rights of Ram Parshad and Hoshiyar Singh qua the plot measuring 16'x50'. With respect to the remaining part of the property, transferred through sale deed dated 14.03.1996, no decree was passed against the vendee/the plaintiff in Civil Suit No. 257.

Therefore, both the Courts have erred in dismissing the suit

Still further, a careful perusal of the layout plan produced by Ram Parshad and Hoshiyar Singh in the previous suit which is Ex.PW.4/A, it is apparent that towards southern side remaining part of the property, which was the subject matter of the sale deed in favour of Ajit Kumar, is depicted to be in possession of Ajit Kumar. In other words, with respect to the property situated towards southern side, Ram Parshad and Hoshiyar Singh never questioned the ownership of Ajit Kumar.

Still further, Ram Parshad and Hoshiyar Singh have not produced any substantive evidence to prove that the remaining part of the plot, after excluding the plot measuring 16'x50' which was the subject matter of dispute in the previous suit, they have any right, title or interest over the remaining part/the property in dispute in this suit.

This Court has also examined the judgment passed in Regular Second Appeal No. 2918 of 2008, decided on 28.04.2010. This Court had only affirmed the findings of fact arrived at by the trial Court as well as the first Appellate Court in the previous suit. The observations made in the judgment dated 28.04.2010 cannot be read in a manner to enhance the scope of the suit.

Keeping in view the aforesaid facts, the plaintiff, who has purchased the property through a registered sale deed dated 14.03.1996 is entitled to injunction after excluding the plot measuring 16'x50' located towards north of the plot in dispute in the present case. In other words, excluding the plot measuring 16'x50', the plaintiff is owner in possession of the remaining plot. At the cost of repetition, it will be noted that the

plaintiff/appellant-Ajit Kumar had purchased the plot measuring 23'x100'.

Hence, the question framed is answered in favour of the appellant/plaintiff.

Regular Second Appeal No. 2529 of 2018 has been filed by Surender Singh son of Raghunath Singh along with an application for permission to file an appeal. It has been claimed by Surender Singh that he also has a share in the plot purchased vide sale deed dated 14.03.1996. Surender Singh, as noted above, is not party to the present suit. The sale deed dated 14.03.1996 is exclusively in favour of Ajit Kumar son of Gajraj Singh.

Keeping in view the aforesaid facts, the appeal filed by Surender Singh is held to be not maintainable. Hence, Regular Second Appeal No. 2350 of 2018 is allowed while setting aside the judgments & decrees passed by the Courts below. There shall be a decree in favour of the plaintiff/appellant for permanent injunction restraining the defendants from digging the foundation, raising construction, changing the nature of the land and interfering in the peaceful possession of the plaintiff.

The miscellaneous application(s), if any, filed in both the appeals shall also stand disposed of.

**(Anil Kshetarpal)
Judge**

February 10, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No