

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 593 of 2021 (O&M)

Devi Singh

... Appellant(s)

Versus

Karambir and Others

... Respondent(s)

AND

2. Regular Second Appeal No. 594 of 2021 (O&M)

Devi Singh

... Appellant(s)

Versus

Deepak Chhabra and Others

... Respondent(s)

DATE OF DECISION: 10.09.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Mukul Aggarwal, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. By this order, Regular Second Appeal No. 593 and 594 of 2021, arising from a common judgment passed by the trial Court as well as the first Appellate Court shall stand disposed of.

2. The appellant, in both the appeals, is the plaintiff in a suit for declaration and mandatory injunction with a consequential relief of permanent injunction. He prays that the defendant No.1 be restrained from alienating the land comprising of the specific khasra numbers and for handing over the possession thereof to defendant No.2 and 3. He further prays for removal of the construction and sought declaration that the sale deed executed on 01.01.2017 is illegal. It is undisputed that the parties are

co-sharers. The plaintiff as well as the defendant No.1 along with certain other owners are the joint owners in the unpartitioned land. The plaintiff, vide a sale deed dated 06.01.2017, sold the land measuring 14 kanals 8 marlas to the defendant No.4 and 5, respectively. The plaintiff further pleaded that there is no agreement to sell with the defendant No.2 and 3. The plaintiff, while selling the land, delivered the possession of the land measuring 14 kanals and 8 marlas to the defendant No.3 and 4, respectively. The learned trial Court as well as the first Appellate Court, on appreciation of the evidence, have found that the parties are the co-sharers in the joint property. The learned counsel for the appellant admits that the proceedings for partition of the property are separately pending.

3. The learned counsel representing the appellant contends that since the sale of 14 kanals 8 marlas of land is in violation of the injunction order, therefore, the sale is void. He further contends that the plaintiff is in possession of the specific portion and the defendants No. 2 and 3 cannot be permitted to handover the possession to the defendant No.4 and 5. While drawing the attention of the Court to the memo of parties, the learned counsel representing the appellant contends that once the defendant No.1 did not challenge the decree passed by the trial Court, therefore, the appeal filed by the defendant No.4 and 5 was not maintainable. He further contends that the trial Court did not frame proper issues.

4. As regards the first argument of the learned counsel representing the appellant is concerned, it is well settled that any sale or transfer of the property, through a registered sale deed, even if, in violation

52 of the Transfer of Property Act, 1882, makes the transfer of the property subservient to the result of the suit, which is commonly known as the “doctrine of lis pendens”. However, ordinarily, merely because a sale deed has been executed in violation of the injunction order, it does not become void or illegal. As per the decree passed by the first Appellate Court, the suit filed by the plaintiff stands ultimately dismissed. Furthermore, it is evident from the reading of the judgment passed by the first Appellate Court that the appellant did not assail the finding of the trial Court that the sale of land by the defendant No.1 is within his share. Both the Courts have accordingly found that the defendant No. 1 has sold the property to the defendant No.3 and 4, in accordance with his share.

5. The learned counsel representing the appellant, however, relies upon the judgment passed in *Mr. Sitakant Kashinath Parab v. The Goa Housing Board and Another* 2016 SCC Online Bom 3548 and *Surjit Singh and Others v. Harbans Singh and Others* (1995) 6 SCC 50. The judgment in *Surjit Singh’s case* (*supra*) is in the context of the assignment of the rights, during the pendency of the suit with reference to Order XXII Rule 10 CPC. The Supreme Court, in the entirely different context, held that the Court has the duty to treat the alienation/assignment as having not taken place at all. The aforesaid judgment, thus, has no applicability to the facts of the present case. Similarly, the judgment in *Mr. Sitakant Kashinath Parab’s case* (*supra*) is also not applicable as in that case the Bombay High Court, while deciding the interim application, held that the party to the suit cannot be permitted to violate the interim orders passed by the Court. In the

specific land.

6. The next argument of the learned counsel representing the appellant is with regard to the attempt of the defendant No.1 to deliver the possession to the defendant No.4 and 5. On perusal of the finding of the fact, it is clear that the defendant No.4 and 5 were put in possession pursuant to the sale deed dated 06.01.2017 and they are in settled possession.

7. The next argument of the learned counsel representing the appellant is with respect to the effect of non-filing of an appeal by the defendant No.1. As per Order XLI Rule 33 CPC, the Appellate Court is entitled to set aside the decree in its entirety even in the absence of the appeal by one of the parties. The power of the Court of appeal is comprehensive and elaborate. It is not necessary that each defendant must file a separate appeal to challenge the decree. Once the decree against the defendants is joint, then it can be challenged by any of the defendant and the Appellate Court is entitled to set aside the same. As per order XLI Rule 4 CPC, one of the several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

8. The last argument of the learned counsel representing the appellant is with regard to failure of the Court to frame proper issues. It would be noted here that the plaintiff/appellant, neither before the trial Court nor the first Appellate Court, ever made an application for framing the proper issues. At the stage of the second appeal, the appellant cannot, for the first time, take up this objection. Furthermore, the learned counsel representing the appellant has failed to draw the attention of the Court to any

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issues.

9. Hence, no ground is made out to interfere. Consequently, both the appeals are dismissed.

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

**(Anil Kshetarpal)
Judge**

September 10, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No