

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-377 of 1990 (O&M)
Date of decision: 13.12.2022

Ram Chander and others

..Appellants

Versus

Ram Sarup (deceased) through LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate, with
Mr. Varun Parkash, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. Defendant no.1 to 3 have assailed the findings of fact arrived at by the first appellate court while decreeing the plaintiff's suit for possession of the property. Sh. Ram Sarup, the plaintiff, filed a suit for grant of decree of permanent injunction and in the alternative for decree of possession. He claims to be owner of House No.596 identified by the description of the property on all the four directions. It is claimed that he purchased the property in a public auction held by the Department of Custodian of Central Government on 27.08.1960 which was confirmed and a sale certificate dated 30.01.1962 was issued in his favour. Whereas defendant no.3(Smt. Rajbala) has executed a sale deed of the suit property in favour of defendant no.1 and

2 on 09.08.1985 in an illegal manner. Defendant no.1 and 2 contested the suit claiming that they are purchaser of the property from defendant no.3, vide registered sale deed dated 09.08.1985. Defendant no.3 reiterated the stand of defendant no.1 and 2.

3. Though, the trial court dismissed the suit, however, the first Appellate court on re-appreciation of evidence reversed the judgment and decree passed by the trial court while decreeing the suit for possession. The court has found that fortunately for the plaintiff the identify of the suit property is not in dispute as Sh. Hari Chand, Sh. Udey Bhan as also DW5-Sh. Aishi Lal, have given the boundaries of the site in dispute which perfectly tally with those given in layout plan, Ex.P1.

4. The First Appellate Court has observed that on the Western of the suit property is the house of defendant no.1. The house was purchased by defendant no.1 and 2 from PW6-Udey Bhan vide sale deed dated 31.05.1984. In the aforesaid sale deed, the Eastern boundary of the house sold by Sh. Udey Bhan to defendant no.1 and 2, the house of the plaintiff, namely Sh. Ram Sarup has been depicted. The sale deed is not only signed by the vendor-Sh. Udey Bhan but also by Sh. Ram Chander. Moreover, before filing the suit, the plaintiff filed an application for ejectment of Sh. Hukam Chand (husband of Raj Bala) and Sh. Hukam Chand while defending the aforesaid case claimed that there is no relationship of landlord and the tenant, thus the ejectment petition was withdrawn in order to file the suit.

5. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book as well as the judgments passed by the courts below along with the record.

6. The learned counsel representing the appellant contends that the plaintiff filed a suit for grant of injunction but he did not seek possession at the outset. He further contends that defendant no1 and 2 have purchased the property through sale deed dated 09.08.1985, therefore, the suit could not be decreed.

7. On a careful reading of the plaint, it is evident that the plaintiff while filing the suit has, in the alternative, claimed decree of possession of the property. The plaintiff has also sought declaration that the sale deed dated 09.08.1985 in favour of defendant no.1 and 2 does not affect his rights. In such circumstances, the plaintiff has already filed the suit for possession.

8. As regards the second argument, it may be noticed that when the defendant no.1 and 2 appeared in evidence, they admitted that before getting the sale deed executed from defendant no.3, they did not verify the title of their vendor. The defendants are claiming property on the basis of sale deed. They are required to prove that their vendor has the title which was transferred in favour of defendant no.1 and 2.

9. As regards identify of the property, DW5 has admitted the correctness of the boundaries of the property in dispute.

10. Hence, no ground to interfere.

11. Dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

December 13, 2022

(ANIL KSHETARPAL)
JUDGE

nt

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No