

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-558 of 1995(O&M)

Date of decision: 12.07.2022

Harbans Singh and another

...Appellants

Versus

Baru Singh (since deceased) through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate, with
Mr. Vidul Kapoor, Advocate,
for the appellants.

Mr. Amit Jhanji, Sr. Advocate, with
Mr. Sanjeev Soni, Advocate and
Ms. Eliza Gupta, Advocate
for respondents No.1(i), (iii-b) and (iv-b)

ANIL KSHETARPAL, J (Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, are governed by Section 47 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 and 2, assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing a suit for grant of decree of permanent injunction in favour of the plaintiff.

3. Plaintiff and defendant no.1 to 3 have respectively purchased 9 kanals 18 marlas of land vide registered sale deeds dated 20.06.1986, and 04.07.1986. The plaintiff (Baru Singh) purchased the land from Devinder Pal Singh, whereas Defendant no.1 to 3 purchased the land from Smt.

Devinder Kaur. Sh. Devinder Pal Singh and Smt. Devinder Kaur are brother and sister. There was a long drawn litigation between the brother and sister which ultimately resulted in decree of declaration that Smt. Devinder Kaur owns the joint property to the extent of 1/5th share.

4. The plaintiff claims that while executing the sale deed by Sh. Devinder Pal Singh, the possession of the suit land comprised in khasra no.53//16/1 and 25 was delivered. He, hence, claims that his possession be protected by the grant of decree of permanent injunction. Whereas, on the other hand, the defendants claim that there predecessor-in-interest namely Sh. Joginder Singh (their father) was in cultivating possession of the land and on purchase of the property from Smt. Devinder Kaur, another co-owner, he continued in possession of the land.

5. The trial Court culled out the following issues on 13.02.1990:-

1. *Whether the plaintiff is entitled to the injunction prayed for in respect of the land in suit?OPP*
2. *Whether the plaintiff is owner in possession of the land in suit as alleged in paras 1 and 2 of the plaint?OPP*
3. *Whether the plaintiff purchased the land in suit from Devinder Pal Singh son of Kuldeep Singh by means of a sale deed dated 20.06.86 for Rs.8000/- OPD*
4. *Whether no cause of action has arisen to the plaintiff for filing this suit?OPD*
5. *Whether the plaintiff has not come to the court with clean hands and is guilty of suppression of material facts?OPD*
6. *Relief.*

Issues framed on 23.04.1990

1. *Whether Devinder Pal Singh was the owner in possession of the suit land on 20.06.1986?OPP*
2. *Whether Devinder Pal Singh executed sale deed dated 20.6.86 in favour of the plaintiff for consideration ?OPP*
3. *Whether the plaintiff is in possession of the suit land?OPD*
4. *Whether the plaintiff is entitled to the injunction claimed?OPP*
5. *Whether Devinder Kaur executed sale deed dated 4.7.1986 in favour of defendants no.1 and 2 for consideration. If so to what effect?OPD*
6. *Relief.”*

6. On a careful reading of the judgments passed by both the courts below, it is evident that the courts have basically decided the suit on the premise that the sale deed in favour of Sh. Baru Singh (plaintiff) was prior in point of time and there was a recital with regard to delivery of possession. The courts have also held that there are certain contradictions in the stand of the defendants.

7. The learned counsel representing the parties admit that both the courts below have failed to record any positive finding on issue no.3A as framed on 13.02.1990. In the considered opinion of this Court, the said issue was the most important issue arising in between the parties. It is the case of the defendants that Sh. Devinder Pal Singh sold in excess of his share, in the joint unpartitioned land.

8. Moreover, both the courts have overlooked the fact that the

parties are purchasers of the respective share in an undivided khata/khewat, which has not been partitioned yet i.e till this date.

9. The learned senior counsel representing the appellant while drawing the attention of the court to the report Ex.D2 and D4, submitted by the revenue authorities, contends that Sh. Devinder Pal Singh had already sold the land measuring 1227 kanals and 19 marlas till 19.06.1986, though, his share was only to the extent of 1217 kanals. He further submits that as per the khasra girdawari for the years 1975 to 1980, it is Sh. Joginder Singh, the predecessor-in-interest of the defendants, who was recorded to be in possession of the land comprised in khasra no.53//25. Whereas the land comprised in khasra no.53//16/2 was recorded in possession of Smt. Tej Kaur (the mother of the defendants). He further draws the attention of the Court to the khasra girdwari Ex.D14 with respect to the period 1980 to 1985, which also evidences the possession of Sh. Joginder Singh on khasra no.25. The learned senior counsel also draws the attention of the court to the deposition of Sh. Pritam Singh recorded on 21.03.1989 which was produced in evidence as Ex.DW4/A, admitting that Sh. Jaswant Singh and Harbans Singh are in possession of the aforesaid property.

10. Per contra, the learned senior counsel representing the plaintiff has contended that the defendants while appearing in evidence have admitted that their possession was recorded upto the year 1985. He further submits that both the courts have recorded the concurrent findings of fact and the findings which should not be interfered with.

11. It is a well settled principle that if the property is joint, normally the court should not grant an injunction against the other co-owners. At the most, both the parties have become co-owners by purchasing an undivided

share in the joint property subject to the validity of sale in the context of title of his vendor. Furthermore, there is no evidence that Sh. Devinder Pal Singh (the vendor of the plaintiff) was in the exclusive possession of the land in dispute. The courts below were impressed upon by the fact that there is a recital of delivery of possession in favour of the plaintiff in the sale deed. Similar is the case of the defendants. In the sale deed dated 04.07.1986 executed by Smt. Devinder Kaur in favour of defendants, the delivery of possession is specifically recited.

12 It is fully established that in the absence of some concrete evidence, the decree for grant of injunction creates even more problems rather than solving it.

13. Keeping in view the aforesaid facts, both the courts have erred in granting injunction merely on the ground that the sale deed in favour of the plaintiff is, prior in point of time. In the facts of the present case, the courts should have directed the parties to seek partition of the joint land in order to decide the respective rights of the parties.

14. Keeping in view the aforesaid facts, the regular second appeal is allowed. The judgments and decrees passed by the courts below are set aside while leaving the opportunity to the parties to file an application for partition of the property before the competent authority under the Punjab Land Revenue Act, 1887.

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

July 12, 2022
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(ANIL KSHETARPAL)
JUDGE

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