

**121-1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1.RSA-353-2021 (O&M)

Sarjit Singh

....Appellant

Versus

Bir Singh and others

..Respondents

2.RSA-359-2021 (O&M)

Sarjit Singh

....Appellant

Versus

Rajesh Kumar and others

..Respondents

Date of decision: 20.05.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ajay Jain, Advocate for the appellants

Mr. Jaivir Yadav, Sr. Advocate with
Mr. Harshvardhan Ranga, Advocate for
respondent no.1 in RSA-353-2021 and for
respondent no.7 in RSA-359-2021

Mr. Rakesh Gupta, Advocate for respondent no.2
in RSA-353-2021

ANIL KSHETARPAL, J (Oral)

Defendant no.1 in a suit for grant of declaration and permanent injunction prays for setting aside the concurrent judgments and decrees passed by the courts below. Both the courts have declared that the various sale deeds executed by Dinesh and Divya, children of late Smt. Kashmiri beyond their share do not affect the rights of the plaintiff.

Some facts are required to be noticed. Sh.Ram Chander

was the owner of the property. At the time of his death, he had three children namely Late Smt.Kashmiri, Smt. Ram Giri and Smt.Raj Bala. He executed the Will in favour of Smt.Kashmiri and Sh.Ram Giri. However, Smt.Sharda daughter of Smt.Raj Bala filed a suit claiming that the aforesaid Will is not valid. The aforesaid suit was decreed on 19.01.1998.

As per the aforesaid decree, the property of late Sh. Ram Chander came to be inherited by his three daughters or their families accordingly. The family of late Smt. Kashmiri got 1/3rd share. She has left behind two class I heirs namely Dinesh and Divya (her son and daughter). The plaintiff and Satbir purchased 16 kanals and 14 marlas of property from Smt. Divya @ Sheru on 08.10.2004. Subsequently, the appellant purchased the property from Sheru @ Divya on 08.06.2006. Both the courts have found that the sale deed dated 08.06.2006 is beyond the share of Smt. Divya @ Sheru. Learned counsel representing the appellant does not dispute this fact.

However, he contends that the plaintiff while filing the suit has claimed decree of declaration to the effect that he, alongwith proforma defendants, are owners to the extent of 1/6th share by virtue of sale deed dated 08.10.2004 and 11.07.2007. It may be noted here that the appellant and Satbir purchased the property from Smt. Divya @ Sheru subsequent to the sale deed executed by Smt. Divya @ Sheru in favour of Bir Singh and the proforma defendants. The previous vendee has a superior right. The argument of the learned counsel that the courts have decreed the suit beyond the relief claimed is without substance

because while passing the order, the court is required to examine the entire facts and grant appropriate relief. Thus, the court has granted decree that the plaintiff and defendants are owners to the extent of 1/6th share. It may be noted here that the judgment passed by the trial court was subsequently clarified by order dated 03.02.2008 and the court held as under:-

“5. It is only a arithmetical /clerical and typographical mistake. Therefore, less - prejudice be caused to either party if application stands to be allowed. Hence, application stands allowed and judgment and decree dated 19.05.2017 stands corrected to this effect that in para No. 20 instead of words " 34 kanal 5 marla" word "35 kanal 0 marla" ; word "17 kanal 3 marla" word "17 kanal 10 marla" and word " not" be added before words "exceeding of her share" in second last line and last line be deleted onward words” 7 marla and qua that sale deed dated 08.10.2004 is liable to be set aside" and in para No. 29 Relief word "17 kanal 3 marla" be corrected as "17 kanal 10 marla share if any". Reader of this Court is directed to do the needful with red pens entry. After needful file be consigned to record room.

Finding no merits, both the appeals are dismissed.

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

20.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE