

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2420 of 2019(O&M)

Date of decision: 13.07.2022

Subhash Chand (since deceased) through LRs and another
...Petitioners

Versus

Dharminder Kumar and others
...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Suri, Advocate, for the petitioners.
Mr. Rishabh Gupta, Advocate, for respondent no.1 & 2.

ANIL KSHETARPAL, J (Oral)

Defendants no.3 and 4 in a suit for grant of decree of separate possession by way of partition are aggrieved by the order passed by the Additional District Judge, SAS Nagar, Mohali, granting an injunction while restraining the petitioners from raising any construction on the land in dispute, have filed the revision petition. The total suit land is 1 kanal and 12 marlas. It is located in Kurali City, which is located on the suburb of Chandigarh. The petitioners have purchased the suit property from Sh. Hari Ram vide registered sale deeds dated 08.04.1993 and 12.04.1993. There was a previous litigation between the legal heirs of Sh. Kashmiri Lal in which a settlement was arrived at, acknowledging the sale of the property in favour of the petitioners to the extent of 10½ marlas. It was agreed that the aforesaid property shall be kept out of the dispute between the legal heirs of Sh. Kashmiri Lal. The operative part of the settlement dated 02.06.2003 reads as under:-

*“c) That whatsoever land out of Khasra No.55//44 (1-12)
5 ½ Marla sold to Rajinder Kumar son of Amar Chand*

and 5 Marla sold to Subash Chand son of Amar Chand at Kurali sold by Hari Ram son of Kashmiri Lal will be given to the purchasers i.e. Rajinder Kumar and Subash Chand.”

Such settlement is signed by the plaintiff-Sh. Jagdish Chand son of Sh. Kashmiri Lal.

On the basis of the aforesaid settlement, a civil appeal was disposed of by the First Appellate Court with the following observations:-

“6. In view of the above position, I am satisfied that the matter has been amicably settled amongst the parties. The appeal is dismissed as withdrawn qua respondent no.2 and 3. The appeal is disposed off as having been compromised. Decree sheet be prepared. Compromise Deed Ex.CX shall form part of the decree and parties shall be bounded by the terms of the compromise. Lower Court file be sent back. Appellate Court file be consigned to the record room.”

Thereafter, the legal heirs of Sh. Kashmiri Lal, once again, filed a suit for grant of decree of possession which was dismissed on 18.12.2012. Once again, Sh. Jagdish Chand's sons, who were party to the deed of settlement, filed the present suit for grant of decree of separate possession along with an application for grant of temporary injunction. The trial Court, after taking into consideration the facts which have been noticed above, dismissed the application. The First Appellate Court has granted an injunction only on the ground that it is a joint land and the same has not been partitioned.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

In my considered opinion, the First Appellate Court has allowed the appeal without examining the facts available on the file. First of all, the concept of joint ownership in the context of a khata/khewat is with respect

to an agricultural land. With regard to the residential or non-residential properties, located either in the village or in the town, the property is joint only if it is co-owned by various persons. The concept of co-ownership with reference to a khata/khewat in the revenue record cannot be imported for the purpose of determining co-ownership in a non agricultural land. Moreover, the deed of settlement has been signed by Sh. Jagdish Chand. Once the aforesaid deed has been signed, then the plaintiff has no prima facie case. In any case, restraining the vendees who have purchased the property for valuable consideration from constructing on the property causes irreparable loss to the vendees and not to the plaintiff. At the most, the plaintiff would be entitled to a share in the property. By constructing certain portion, the rights of the plaintiff are not adversely affected. There may be a value addition on account of construction but there cannot be any deduction in the price.

Keeping in view the aforesaid facts, the order passed by the Additional District Judge is set aside while restoring the order of the trial court.

The revision petition is allowed.

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

July 13, 2022
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(ANIL KSHETARPAL)
JUDGE

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