

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3493 of 2014 (O&M)

Date of Decision: 25.07.2022

Jinesh Kumar Jain

... Appellant(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sumeet Jain and Mr. Ankur Bali, Advocates
for the appellant(s).

Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana, for the respondent No.1 to 3.

Mr. Sandeep Kotla, Advocate
for the respondent No.4.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh are 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 v. Chandrika and Others (2016) 6 SCC 157.***

2. The plaintiff/appellant calls into question the correctness of the judgments and decrees passed by both the Courts below while dismissing his suit. Though, the detailed facts are not required to be noticed because this Court is of the considered view that the matter is required to be remitted to the learned trial Court for deciding it afresh, however, in order to complete the narration of facts, brief facts are being noticed, herein.

3. Smt. Kitab Kaur and Smt.Bhagwati Devi were the co-owners. They divided the land amongst themselves and an entry in the revenue record was made on 02.07.1974. Thereafter, they carved out a colony. Smt.Kitab Kaur, through her husband late Sh.Khazan Singh, sold plot No. 57 in one of the land comprised in khasra No. 1107 measuring 200 square yards vide registered sale deed dated 24.07.1974 in favour of Sh.Kartar Singh. Smt.Poonam Pathak has purchased a plot No. 57 from Sh.Kartar singh vide registered sale deed dated 25.03.1975. The plaintiff has purchased the plot No. 57 from Smt.Poonam Pathak. However, the revenue record continued in the name of Smt.Kitab Kaur, who is alleged to have forcibly dispossessed the plaintiff (Sh.Jinesh Kumar Jain, the purchaser from Smt.Poonam Pathak). He filed a suit for declaration that he is the owner in possession and the revenue entries are made under the wrong name. During the pendency of the present appeal, an application for permission to amend the plaint, in order to seek relief of possession, has been filed.

4. It is evident that when the plaintiff appeared in evidence, he produced copies of the sale deeds, dated 25.03.1975 executed in favour of Smt.Poonam Pathak and the sale deed dated 18.05.1985 executed by Smt.Poonam Pathak in his favour. Both the Courts below have held that these sale deeds have not been proved on the record as the attesting witnesses have not been examined. It has further been held that the photocopies of the sale deed cannot be admitted in evidence unless prior permission to lead the secondary evidence is sought. A perusal of the record shows that the plaintiff summoned Sh.Dinesh Kumar, Record Keeper, from the office of the Registrar, Gurugram, who appeared as PW.5. He brought

the same record of the sale deed No. 1755 & 1756, dated 24.07.1975 and deed No. 4103, dated 25.03.1975, deed No. 943, dated 18.05.1985 and GPA No. 125, dated 12.07.1974. As per the provisions of the Registration Act, 1908, each sale deed is required to be prepared in, with at least, two copies. The vendors and the vendees are required to sign on both the copies of the sale deed. One copy of the registered sale deed is returned to the purchaser whereas the other copy of the same is pasted in the register/diary maintained by the Registrar. Such copy is original because it is signed by vendors, vendees and the witnesses. Thus, both the Courts below have erred while recording a finding that the sale deeds have not been produced. judgment of the Supreme Court. Reliance in this regard is placed on the judgment passed by this Court in *Sewa Singh v. Balwinder Kaur and Others (Regular Second Appeal No. 2334 of 2018, decided on 08.07.2022)*.

5. The second ground for refusing to look into the evidence because the plaintiff did seek prior permission is not required to be deliberated here.

6. For the purpose of record, it should be noted that there is no provision in the High Court Rules and Orders for the parties to seek prior permission of the Court for leading secondary evidence. The evidence can be of primary nature as well as of secondary nature. Once it has been led, the Court will examine whether it is a primary evidence or secondary evidence. At that stage, the Court can examine whether the parties have fulfilled the parameters for leading the secondary evidence or not. Reference in this regard can be made to the judgment rendered by the Supreme Court in *Dhanpat v. Sheo Ram (Deceased) through Legal Representatives and*

Others (2020) 16 SCC 209. This Court, in *Vinod Kumar v. Satbir Singh (Civil Revision No. 2575-2020, decided on 03.03.2021)* has followed the same view.

7. The relief of possession, which has been sought by filing an application for amendment is consequential to the relief of ownership. Hence, the prayer for grant of relief of possession cannot be overlooked by the Court once the the plaintiff proves the ownership.

8. Keeping in view the aforesaid facts, the present appeal is allowed and the application for amendment of the plaint is allowed. The judgments and decrees passed by both the Courts below are set aside. The case is remitted back to the learned trial Court to decide it afresh after granting an opportunity to the defendants to file their respective written statements to the amended plaint and lead further evidence, if any prayed for. The learned counsel for the appellant has stated that an application for additional evidence has also been filed along with the original sale deeds. Let the office while remitting the record, send the original sale deeds to the learned trial Court while retaining its photocopies.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 25, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No