

RSA-1108-2020

- 1 -

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

120

RSA-1108-2020

Decided on : 25.09.2023

Jeet Singh

... Appellant(s)

Versus

Randhir Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amit Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by defendant No.2 (appellant herein) against the concurrent findings of dismissal of suit for partition.

2. For the purpose of clarification, learned Senior counsel for the appellant (defendant No.2) submits that in fact, defendant No.2 – Jeet Singh, purchased the property in question from the plaintiff – Randhir Singh, during the pendency of the suit before the Trial Court, therefore, during the pendency of the suit, he was impleaded as defendant No.2. First appeal filed by him also stands dismissed. Thus, he has filed present regular second appeal before this Court.

3. Learned Senior counsel submits that plaintiff – Randhir Singh, has filed a suit for partition against the defendant – Kailash Gahlot with the averment that the plaintiff and defendants are joint owners in equal shares of the land comprised in Khewat No.139, Khatoni No.144, Rect. No.4, Killa No.24 (8-0), Rect. No.12, Killa No.3/1 (0-12), 3/2 (0-8), 3/6 (1-1), 3/7 (0-

17), 3/8 (0-12), 3/9 (0-3), 8/1 (1-14), 8/2 (1-12), 8/4 (1-13), 3/6 (0-12), area 16 Kanal 14 Marla, situated in the revenue estate of Pawala Khushrupur. There remains quarrel between the parties with regard to the possession over respective shares. Plaintiff does not want to keep suit property as joint any-more. So far, the property has not been partitioned by metes and bounds by any competent court.

4. In the written statement filed by defendants, apart taking the formal objections, it has been pleaded that plaintiff himself, his sister – Sushila Devi and mother – Kela Devi, had filed a Civil Suit bearing No.136 of 1998, on 30.04.1998, seeking relief of declaration and permanent injunction against Prem Properties Pvt. Ltd. In the said suit, sister and mother of the plaintiff claimed their ownership along with possession over the land, which is also a subject matter of the present suit, measuring 16 Kanal 14 Marla, situated in revenue estate of Village Pawala Khushrupur, Gurugram. Said suit was dismissed on 04.05.2005 by the Court of Addl. Civil Judge (Sr. Divn.), Gurugram.

Mr. Amit Jain, learned Senior counsel for the appellant (defendant No.2) points out that in fact, in the proceedings of the said suit, name of plaintiff - Randhir Singh is not mentioned in the facts detailed in the said judgment passed by the Trial Court in that suit.

5. Appeal against the said judgment & decree of dismissal of the suit filed by all three of them, was also dismissed by the learned Lower Appellate Court vide judgment and decree dated 30.11.2005.

6. Taking note of the said fact, learned Courts below concluded that once, plaintiff was not having any valid title in the property in question, same could not be transferred by the plaintiff in favour of defendant No.2.

In such a scenario, even plea of *bona fide* purchaser would not exist. In this regard, relevant findings recorded by learned First Appellate Court in paragraph Nos. 21, 22 & 23, are reproduced here-under:-

“21. From the above discussion, it is observed that when respondent No.1/plaintiff himself was not having any valid title in the property in question then how he can sell out the said property to appellant/defendant No.2. Though appellant/defendant No.2 himself claiming to be bonafide purchaser in possession of the suit property and had purchased the same after proper verification but in this regard no cogent evidence has been placed on court file that he was not aware of this fact that the suit property was not in possession of respondent No.1/plaintiff as he has lost every right regarding the said property by way of agreement to sell dated 08.09.1995 and General Power of Attorney dated 10.10.1995 which had been executed in favour of M/s Prem Properties Private Limited.

22. As far as contention of learned counsel for appellant/defendant No.2 that these above said documents cannot be considered as they have not been proved and exhibited on the case file as per Indian Evidence Act, the said contention is of no force because qua these documents, Ex.DW3/1 i.e. judgment passed by Ms. Shalini Singh Nagpal, learned Additional Civil Judge (Senior Division), Gurugram and Ex.DW3/5 i.e. judgment passed by Shri K.C.Sharma, learned Additional District Judge, Gurugram has already

RSA-1108-2020

- 4 -

attained the finality by dint of which the authenticity of above said documents have been confirmed, so it can be presumed that these documents are genuine one and certainly be taken into consideration while deciding the present appeals. The learned lower court vide impugned judgment dated 23.08.2016 has rightly placed reliance upon these documents that by way of these very documents the suit property has already been sold out by Prem Properties Private Limited to various persons vide separate sale deeds Ex.DW1/1, Ex.DW2/2 to Ex.DW2/11 who certainly have not been made party by Randhir Singh/plaintiff.

23. *So, finding no merits in the present appeal the same is hereby dismissed. The judgment and decree dated 23.08.2016, passed by Ms.Mohini, learned Civil Judge (Junior Division), Gurugram is upheld. Decree sheets be prepared. Trial court record be sent back together with a copy of the Judgment. Appeal file be consigned to records after due compliance.”*

7. I have heard learned Senior counsel for the appellant (defendant No.2) and also gone through relevant record of the case.

8. Taking into consideration the findings recorded by the learned Court below, that there being no right with the plaintiff, property could never be transferred by him to anyone, thus, Court is of the view that no question of maintainability of suit by partition at his instance arises.

Besides, no question of law, much less, any substantial question

RSA-1108-2020

- 5 -

of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

Thus, the instant appeal being devoid of merits, stands **dismissed**. The judgment(s) & decree passed by both the Courts below are hereby affirmed.

(SANJAY VASHISTH)
JUDGE

September 25, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*