

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1. RSA-480-1992 (O&M)
Date of decision: 23.04.2024

BALBIR SINGH ..Appellant

Versus

MOHINDERJIT SINGH AND ANR. ..Respondents

2. RSA-481-1992 (O&M)

BAKSHISH SINGH (DECEASED) THROUGH LRS. ..Appellant

Versus

MOHINDERJIT SINGH AND ANR. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sarju Puri, Advocate
for the appellant.

Mr. Amit Jhanji, Sr. Advocate
with Ms. Priyanka Kansal, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. With the consent of the learned counsel representing the parties, two connected appeals arising from two connected and similar suits shall stand disposed of by this common order.
2. After having heard the learned counsel representing the parties, this Court is of the view that the matter is required to be remitted back to the First Appellate Court to decide the matter afresh. Hence, only relevant facts are being noticed.
3. Sh. Gian Singh purchased the suit property for Rs.20,000/- in a restricted auction held under the Punjab Package Deal Properties (Disposal)

Act, 1976 (hereinafter referred to as the '1976 Act'). The plaintiff Sh. Balbir

Singh and Sh. Bakhshish Singh claim that Sh. Gian Singh entered into two agreements to sell in their favour on 12.03.1982. The plaintiffs also claim that they were in possession of the property as tenants under Sh. Gian Singh five years before the alleged agreements to sell and they continued to be in possession. As per the recital in the agreement to sell, the sale deed was to be executed after the mutation in his favour was sanctioned in favour of Sh. Gian Singh. On 18.08.1986, sale certificate was issued in favour of Sh. Gian Singh by the Government and mutation was sanctioned on 26.08.1986. Two suits for grant of decree of permanent injunction were filed by both the plaintiffs i.e. Sh. Balbir Singh and Sh. Bakhshish Singh. Sh. Balbir Singh plaintiff-appellant filed suit for permanent injunction against Sh. Gian Singh on 04.09.1986, which was decreed on 16.10.1987. Consequently, on 13.01.1988, Sh. Gian Singh sold the land measuring 64 kanal and 13 marlas in favour of Sh. Mohinderjit Singh (respondent No.1). Similarly, another sale deed was executed in favour of Sh. Bakhshish Singh with respect to the remaining land. In the year 1988, two suits were filed by Sh. Balbir Singh and Sh. Bakhshish Singh for grant of decree of declaration that they are in possession as prospective vendees on the basis of two agreements to sell dated 12.03.1982. The defendant contested the suit on the ground that he has become owner by virtue of sale deed. The trial Court decreed both the suits, however, the first appeal filed by defendant No.2 in both the suits has been allowed by the Court on the ground that the Civil Court has no jurisdiction as per Rule 8 read with Section 16 of the 1976 Act.

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

5. This Court is of the opinion that the First Appellate Court has erred in reversing the judgment of the trial Court on the ground that the Civil Court has no jurisdiction particularly when Sh. Gian Singh never contested the suit. The litigation is between Sh. Balbir Singh and Sh. Bakhshish Singh on one hand and Sh. Mohinderjit Singh on the other hand. The question of validity of allotment or its cancellation is not in dispute. Moreover, the trial Court while identifying the issues involved in both the suits as settled the following issues:-

- “1. Whether defendant No.2 executed an agreement of sale dated 12.03.1982 in favour of the plaintiff in respect of the suit land? OPP*
- 2. Whether defendant No.2 received Rs.10,000/- as earnest money from the plaintiff vide agreement of sale dated 12.03.1982? OPP*
- 3. Whether the plaintiff and his brother were in possession of the suit land as tenants under defendant No.2 prior to the execution of the agreement dated 12.03.1982 and thereafter the plaintiff is in possession as prospective vendee? OPP*
- 4. Whether the defendants are bound by the judgment and decree dated 02.03.1987? OPP*
- 5. Whether the alleged sale deed dated 13.01.1988 by defendant No.2 is favour of defendant No.1 is illegal, void and ineffective? OPP*
- 6. Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for? OPP*
- 7. Whether the suit does not lie in the present form? OPD*
- 8. Whether the Civil Court has no jurisdiction to try the suit? OPD*
- 9. whether defendant No.1 is in possession of the suit land as owner? OPD*
- 10. Relief.”*

6. The First Appellate Court has not adverted to any other issue except issue No.8. The First Appellate Court is required to decide all the issues, which arise between the parties. It was not correct on the part of the First Appellate Court to decide the appeal only on one issue. Even if the First Appellate Court was of the view that the suit was not maintainable before the

Civil Court still the finding was required to be given on remaining issues particularly when the trial Court had given a detailed judgment. As already noticed, the real dispute between the parties is with regard to the competing rights of the plaintiff on one hand and Sh. Mohinderjit Singh (defendant No.1) on the other hand.

7. Keeping in view the aforesaid facts, this Court is left with no choice but to remit the matter back to the First Appellate Court to decide the appeal afresh after hearing the parties.

8. Though, this order is being passed after a period of 34 years, however, the scope of interference in regular second appeal is limited. The First Appellate Court is a last Court for appreciation of facts and evidence.

9. This Court does not find it appropriate to hear these appeals as a First Appellate Court.

10. With these observations both the appeals are disposed of. The judgment passed by the First Appellate Court stands set aside.

11. The parties through their counsel are directed to appear before the First Appellate Court on 27.05.2024.

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

April 23rd, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

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