

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.356 of 1989 (O&M)

Date of Order:14.02.2024

Budhi Ram**.Appellant****Versus****Gordhan Dass and others****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Mr. Amit Jain, Sr. Advocate, with
Mr. Varun Parkash, Advocate
for the appellant.**

**Mr. Amit Jain, Advocate
for the respondents.**

ANIL KSHETARPAL, J

1. In this regular second appeal, the plaintiff assails the correctness of a small error in the judgment and decree passed by the First Appellate Court. In substance, the plaintiff's suit has been decreed by the First Appellate Court against which the defendants have not filed any appeal. However, the relief to the plaintiff has been restricted to the portion marked with letters 'ABCD' in the site plan Ex.P1, on the ground that the prayer made in the suit is restricted to the aforesaid portion.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The plaintiff filed the suit for possession, removal and demolition of structure over plot measuring 90'x33'. He claimed that the suit property was his ancestral property which came to his share in a memorandum of family settlement arrived at on 09.07.1970 and the plaintiff became the exclusive owner. Defendant nos.4 and 5 in collusion with defendant nos.1 and 2 executed the sale deed in favour of defendant nos.1

and 2 and forcibly occupied it. Subsequently, defendant no.1 sold some part of the property to defendant no.3 vide sale deed dated 10.02.1982.

4. Defendant no.4 and 5 did not enter appearance and were proceeded against ex-parte.

5. Defendant no.1 to 3 contested the suit. It was claimed that Sh. Mohan Lal and Sh. Mangal have been coming in possession as owners and the defendant no.1 has constructed a house by spending Rs.40,000/- after having purchased the property vide sale deed dated 31.03.1978. The genuineness of the family settlement dated 09.07.1970, was also disputed.

6. The trial court dismissed the suit, however, as already noticed, the First Appellate Court on re-appreciation of the evidence came to a conclusion that the defendants failed to prove their title. In fact, the defendants claim that the suit property belong to Sh. Chhutan and after his death, the property came to the share of defendant nos.4, 5 (two sons of Sh. Chhutan) and sister Smt. Ram Piari. Smt. Ram Piari inherited the property to the extent of 1/3rd share who vide unregistered sale deed sold the property to Sh. Mohan Lal and Sh. Mangal for Rs.99/-, her two brothers. Subsequently, the sale deeds were executed. The court found that the defendants have failed to prove the title of Sh. Chhutan however, the court assumed that Sh. Chhutan had a title for examining the defendants' case from yet another angle. This assumption was made because according to the opinion of the First Appellate Court the plaintiff has only claimed relief with respect to the plot shown in red by letters 'ABCD'.

7. In para 13, the First Appellate Court on appreciation of the evidence has recorded the following findings:-

“13. As against the above documentary evidence,

what the defendants have relied upon is an unregistered sale deed at Ex. PW10/1 (page 141 of the file) dated 16-2-1972. According to the learned counsel for the defendants the whole of the suit property belong to Chuttan, the father of defendants no.5 and 5. Defendants no.4 and 5 had a sister named Rampyari and the suit property was inherited by defendant no.4 and 5 and Ram Pyari in equal shares from Chuttan. Ran Pyari was thus the owner of 1/3rd share in it. Vide this unregistered sale deed she sold her 1/3rd share to Mohan Lal and Mangal defendant No.4 and 5 for a sum of Rs.99/- and executed the sale deed copy at Ex. PW10/1. It this sale deed is considered to be a genuine document taking for granted that this was duly executed, firstly the title of Chuttan is not proved through any other document and secondly the length of the property shown in this document is 55 ft. 7 inch whereas the length of the total property under dispute is more than 95 ft. It is according to the written statement as well as according to the sale deeds at Ex.2 and Ex. P3 executed by defendants No.4 and 5 in favour of defendants No.1 and 2. It is not only that 55 ft. of length has been sold but vide sale deed Ex.P2, 71 ft. of length has been sold. That means 96 ft. of length has been sold to defendants no.1 and 2. From where the remaining part has come. It is at this point that para no.1 of the plaint becomes relevant wherein the plaintiff himself has stated that the disputed property was within the four corners of letters ABCD shown at site plan Ex. 21. ABCD enclosure of the site plan is a property 40 ft. 6 inch in length and 33 ft. in width. It shows that the

remaining property does not belong to the plaintiff and belongs to Chuttan and after his death to defendants no.4 and 5 alongwith Ram Pyari, the legal heir of Chuttan. The plaintiff himself has stated that his dispute was regarding the property marked by letters ABCD and had not cared to amend the plaint throughout the long trial of the case and it shows that his claim was only limited to 40 ft. 6 inch x 33 ft. dimensions property enclosed by letters ABCD on the site plan Ex.P.1 If in this context, the documents referred earlier are read, the same would also show that the property under dispute is only within the four ex corners of ABCD and not the remaining property as it is the property within the enclosure of ABCD that is situated exactly towards the east of the property of Kanwar Sein and Narain Dass and towards the south of the property of Preetam Chand as all those documents do not mention the lengths and breadths of the property under dispute. So far as the plaintiff case is concerned therefore, I am of the considered view that the property enclosed by letters ABCD measuring 40 ft. 6 inch east-west and measuring 33 ft. north-south belongs to the plaintiff and he is the owner thereof and he has a right to pass this much of land out of the whole of the suit land. So far as the defendant's case is concerned, the defendants themselves have relied upon the document at Ex. PW10/1 in their entire argument before me and even if this document is wholly relied upon they can be considered to be the owners of 55ft. 7 inch x 30 ft. of land as recorded in this sale deed/7/ but the exact dimensions as shown on the site plan Ex.P1 and 55 ft. 6 inch x 33

ft. and this proportion has been marked by letters CDEHGF on the site plan Ex. P.1.”

8. The learned senior counsel representing the appellant submits that apart from site plan, the plaintiff had also disclosed the details of the properties located on all the four directions as well as the dimensions which in para 1 of the plaint are extracted as under:-

“East: Boundary wall of Municipal Committee, Ferozepure Jhirka which has since been demolished, now used as Gali.

West : Plot of Shri Narain Dass son of Gopal Dass and Rasta to the plot in suit, and house of Shri Kamli and Phusoo sons of Ghafoor (Rangrez) and also other plot of the plaintiff.

North: House of Preetam Chand Vijay Kumar sons of Nand Lal

South: Thoroughfare and thereafter the plot of the plaintiff and Smt. Anandi widow of Ananda.

Dimensions:

East : (From North of South) 95 feet

West : (From North of South) 95 feet

North: (From East to West) 25 feet

South: (From East to West) 33 feet.

A site plan is attached here with for reference.”

9. He submits that even if there was some small mistake in the prayer clause, the court was entitled to mould the relief in the interest of justice.

10. On the other hand, the learned counsel representing the respondents submits that the First Appellate Court has found that the plaintiff has proved that Smt. Ram Piari was the owner and therefore, the title has passed on to the defendants.

11. This court has considered the submissions of the learned counsel representing the parties.

13. On a careful reading of the entire judgment passed by the First Appellate Court, it is evident that the defendants failed to prove their title of the entire plot measuring 95'x33'. While examining the defendants' evidence, the court has held that though there is no document of title in favour of Sh. Chhutan, however, still even if his ownership is assumed for the argument sake, still defendants have failed to prove their case. This finding is based on the assumption that the plaintiff has only prayed for the relief with respect to the property described in the site plan with letters 'ABCD' which measures 33'x45'.

14. Furthermore, this court has examined the layout plan Ex.P1. It is evident that a plot measuring 33' in width and 95' in length is located on a passage. It is one integrated plot with 33' front on the street. It is also proved that it is the plaintiff or his predecessor who had sold the adjoining properties to Sh. Pritam Chand, Sh. Narain Dass and Smt. Ramwati. There is no document to prove that Sh. Chhutan was owner of the disputed property.

15. In any case, even if there was some error in the prayer clause, the court while doing substantive justice should have moulded the relief as provided under Order VII Rule 7 CPC. In para one of the plaint itself the plaintiff had claimed that the dimensions of the suit property are 95'x33'. While granting the relief, the First Appellate Court should have taken note of the fact.

16. This court has been informed that the disputed property described with letters 'ABGH' is in three parts. The First Appellate Court

has already decreed portion described with letters 'ABCD'. Sh. Kanhiya Lal, defendant no.2, claimed the property marked by letters 'CDEF', who has already vacated the premises and handed over possession to the plaintiff. Now the only dispute remains with regard to portion described with letters 'EFGH'. A bare look at the layout plan it becomes evident that a small portion is integral part of the bigger plot i.e. 'ABGH'.

17. Keeping in view the aforesaid facts and discussion, the appeal is allowed. The judgment and decree passed by the First Appellate Court is modified. There shall be decree of possession with respect to plot bounded with letters 'ABGH'.

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

February 14, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO