

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1201 of 1994

Kartar Singh (Now Deceased) through his Legal Representatives
... Appellant(s)
Versus
Rohtash Singh and Another
... Respondent(s)

AND

2. COCP No. 1352 of 1996

Shakuntala Devi and Others
... Petitioner(s)
Versus
Rohtash Singh and Another
... Respondent(s)

DATE OF DECISION: 06.03.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjay Majithia, Senior Advocate
with Mr. R.P.Daaria, Advocate
for the appellant(s) (In RSA-1201-1994) and
for the petitioner(s) (In COCP-1352-1996).

Mr. Rajinder Goel, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The plaintiff has filed this regular second appeal to assail the correctness of the judgment and decree passed by the First Appellate Court, which, in turn, has reversed the judgment and decree passed by the Trial

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back to the Trial Court. Subsequently, the Trial Court decided the matter afresh.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiff/appellant (since deceased) filed a suit for the grant of decree of permanent injunction and possession of the residential plot. He through the suit land claimed that he purchased the property vide sale deed dated 11.02.1985 from Deep Chand and Hoshiar Singh, sons of Gopal and the defendants wanted to encroach upon the same and they might have already encroached upon some portion thereof.

3. The defendants, while contesting the suit, claimed that the plaintiff is neither the owner nor in possession of the property. It is, in fact, the defendants who are in possession of the property for the last 25 years. Deep Chand and Hoshiar Singh were never the owners of the plot i.e. Ahata No. 77, Ghar No. 201.

4. The Trial Court decreed the suit and held that the plaintiffs are entitled to possession of some part of the property. However, the First Appellate Court, upon re-appreciation of evidence, found that the plaintiffs claimed to have purchased the plot measuring 270 square yards, whereas the disputed plot measures 529 square yards. Moreover, in the judgment dated 13.12.1926 (Ex.PX3), it is evident that the name of Dev Karan was recorded to be in possession of the said plot but he was neither the owner nor was he ever allotted the plot. Hence, the plaintiffs have failed to prove the title of their vendors. Moreover, the defendants, during the pendency of the suit,

have purchased the property vide registered sale deed dated 21.09.1990 from

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Ganga Sahai son of Rura who was recorded as owner in judgment (Ex.PX3) dated 13.12.1926.

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the scanned digital record of the Trial Court.

6. The learned senior counsel representing the appellant contends that the defendants have filed as many as three written statements. He submits that it was only in the third written statement, the defendants pleaded that they had purchased the property vide sale deed dated 21.09.1990. He further submits that the judgment (Ex.PX3) proves that Dev Karan son of Ganga Sahai was in possession of the property which was transferred to the plaintiffs.

7. On the other hand, the learned counsel representing the respondents submits that perusal of the judgment (Ex.PX3) proves that Ganga Sahai son of Rura was owner of the property which has been sold to Rohtash. He further submits that the name of Dev Karan is only recorded in the column No.4 which relates to possession. He further submits that Dev Karan is thus not proved to be the owner. He further submits that there is no evidence adduced to prove that the suit land was ever allotted to Dev Karan.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. Ex.PX3 is a pivotal document on which both the parties are relying upon. On a careful perusal thereof, it is evident that Ganga Sahai son of Rura was recorded as owner. The name of Dev Karan was only recorded

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in the column of possession. There is no evidence that Dev Karan was ever allotted the land.

10. Furthermore, the plaintiff had purchased the plot measuring 270 square yards. Though, he has failed to prove that the vendors, namely Deep Chand and Hoshiar Singh sons of Gopal were having any right, title or interest in the same. Moreover, the disputed plot measures 529 square yards.

11 Keeping in view the aforesaid discussion, there is no ground to interfere with the judgment passed by the First Appellate Court. Hence, Regular Second Appeal No. 1201 of 1994 is dismissed.

12. Civil Original Contempt Petition No. 1352 of 1996 has been filed to allege violation of the interlocutory order passed during the pendency of the suit. Once the appeal has been dismissed, this Court does not find it appropriate to continue with the contempt petition. Hence, Civil Original Contempt Petition No. 1352 of 1996 is disposed of.

(Anil Kshetarpal)
Judge

March 06, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No