



142 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-24-2024(O&M)

Date of decision : 23.05.2024

Om Parkash and another

...Appellants

Vs.

Liyakat Khan and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.N. Lohan, Advocate
for the appellant.

ANIL KSHETARPAL, J. (Oral)

1. This second appeal against the order has been filed by the defendants to assail the correctness of the First Appellate Court's order remitting the matter back to the trial Court for fresh decision.
2. The respondent-Liyakat Khan filed a suit for the grant of decree of permanent injunction restraining the defendants from interfering in his possession or encroaching upon any part of his plot measuring 80 Sq. yards.
3. In substance the plaintiff claimed that Sh. Jugal Kishore being the owner of the property after receipt of Rs.3,30,000/- has entered into an agreement to sell on 26.03.2018, with respect to the suit property. Sh.Jugal Kishore- defendant No.3 on 17.05.2018, sworn an affidavit admitting the plaintiff to be in possession. When the plaintiff started construction on the suit property, the defendants objected forcing the respondent to file a suit for injunction, which was dismissed by the trial Court. However, the First Appellate Court upon re-appreciation of the evidence has remitted the matter back to the trial Court by recording the following reasons:-

"24. After going through the pleadings of the parties and their



evidence, depicted above and arguments of their learned counsels and with due deference with ratio of rulings supra, it is expressed that contesting respondents no.1 & 2 in their written statement have virtually not disputed the fact of existence of suit property i.e. a plot measuring 80 sq. yards as depicted in the plaint as well in the agreement to sell dated 26.3.2018 Ex.P1 also described in site plan Ex.P12. Thus fact of existence of suit property at the spot is proved. But this fact has not been adjudicated by learned Trial Court whether suit property is the same or different from the property described in registered sale no.1171 dated 7.5.2018 Ex.D5, claimed by respondent no.2. As a result thereof this fact remained un-adjudicated at the date of filing the suit which of the party i.e whether appellant or contesting respondents no.1 & 2 or performa respondent no.3 were in possession over the suit property.

25. Thus dispute between the parties further aggravated. This fact cannot be left un-noticed that contesting respondents 1 & 2 in para no.9 of their joint written statements themselves made recitals that respondent no.2 Smt. Santosh Devi was the registered owner of the suit property and appellant Liyakat Khan being a trespasser had no right, title or interest to seek injunction. Such recitals obviously bring an interpretation that respondents no.1 & 2 virtually admitted the fact that appellant had a concern with the suit property. But at the same time as already pointed out that this fact remained un-resolved that whether suit property, suit property is a part or is not a part of the property purchased by registered sale deed dated 7.5.2018 Ex.D5 by respondent no.2 from another vendor Zarina Khatun not made a party to the suit.

26. In above a ticklish situation, it appears just and appropriate that decision on all the issues should be made by resorting to demarcation by concerned revenue authority of the suit property depicted in the agreement to sell dated 26.3.2018 Ex.P1 by the appellant executed in his favour by performa respondent no.3 Jugal Kishore and property depicted in the registered sale deed 1171 dated 7.5.2018 Ex.D5 executed in favour of respondent no.2 Santosh Devi by another vendor Zarina Khatun.”

4. Learned counsel representing the appellants has made the following submissions:-

1. As per the agreement to sell, the possession was to be delivered on receipt of the complete payment at the time of registration of the sale deed.
2. The First Appellate Court has wrongly observed that demarcation of the property is necessary.
3. Mere agreement to sell does not confer any right or title

upon the plaintiff, whereas, the appellants are purchasers of the suit property.

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

6. The plaintiff has specifically asserted in para 2 of the plaint that Sh. Jugal Kishore on 17.05.2018 has sworn an affidavit admitting the plaintiff to be in possession of the suit property. He has also stated that the construction upto Lintel level of the ground floor has been completed. If pursuant to an agreement to sell the possession is delivered, the prospective vendee is entitled to protect the possession under Section 53-A of the Transfer of Property Act, 1882. However, that stage is yet to come. The First Appellate Court has only remitted the matter back to the trial Court for fresh decision as it was found that the trial Court has failed to examine the matter in a correct prospective. Moreover, in this case, identification of the suit property is necessary. At this stage, the learned counsel representing the appellants submits that even Sh. Jugal Kishore was not the owner of the property.

7. Be that as it may. The First Appellate Court has only remitted the matter back to the trial Court for deciding it afresh. It shall be open to the defendant to prove their case before the trial Court by producing relevant evidence in support of their claims.

8. Hence, no ground to interfere is made out.

9. Dismissed.

23.05.2024

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Whether speaking/reasoned :
Whether Reportable :

Yes
Yes

(ANIL KSHETARPAL)
JUDGE

No
No