

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on:15.10.2024
Pronounced on: 19.10.2024

I. ESA-56-2013 (O&M)

SMT. SAROJ

Vs.

SUMER SINGH

... APPELLANT

.... RESPONDENT

II. RSA-3293-2013 (O&M)

SMT. SAROJ

Vs.

SUMER SINGH

... APPELLANT

.... RESPONDENT

CORAM: HON’BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sandeep Kumar Yadav, Advocate,
for the appellant.

Mr. P.R. Yadav, Advocate,
for the respondent.

DEEPAK GUPTA, J.

This order shall dispose of two matters as referred above, as both of them pertain to the same subject matter and between the same parties, though arising out of two separate proceedings.

2.1 Trial Court record was called. Same has been perused. To avoid confusion, parties shall be referred as per their status before trial court.

3. As the perusal of the trial Court record would reveal, one Ram Kishan [*husband of Smt. Saroj/ appellant herein*] entered into an agreement to sell dated 31.05.1999 in favour of Sumer Singh (*respondent herein*) in respect of a shop and a room measuring 4-1/2 Marla for consideration of ₹1,45,000/- forming part of:

Khewat	Khatauni	Rectangle	Khasra	Area	Village
178	205	48	11/1/1	0-10 (1/4 share)	Berli Kalan, Tehsil &

179	206	48	11/1/2	2-0 (1/18 share)	Distt. Rewari (Jamabandi 1994-95)
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An amount of ₹1,35,000/-was paid as earnest money. Since Ram Kishan failed to perform his part of contract, Sumer Singh filed a suit [**civil suit N: 386 of 1999/2000**] on 18.11.1999 for specific performance of the said agreement. The same was decreed on 18.10.2004 by Ld. Addl. Civil Judge (Sr. Divn), Rewari. Appeal [**civil appeal N: 45 of 2004**] filed by Ram Kishan i.e. defendant of that case was dismissed by the Appellate Court of Ld. Additional District Judge, Rewari on 27.04.2005. Pursuant thereto, sale deed dated 21.08.2006 was executed and registered in the name of Sumer Singh.

4.1 Another litigation was started by Smt. Saroj, the wife of Ram Kishan. She instituted a **Civil Suit No.90 of 2000** against Sumer Singh. Said suit was filed on 27.05.2000 i.e. during the pendency of the earlier suit filed by her husband against Sumer Singh.

4.2 In the said suit, Saroj claimed to be owner in possession of a shop (measuring 14 sq. yd.) forming part of:

Khewat	Khatauni	Rectangle	Khasra	Area	Village
34	44	48	10/2/3	0-7 (1/2 share)	Berli Kalan, Tehsil & Distt. Rewari (Jamabandi 1994-95)

It was claimed by her that she had purchased the said shop by virtue of a sale deed dated 03.01.2000 for consideration of ₹22,000/- from one Hari Singh and regarding which mutation No.1184 was sanctioned in her favour. Said shop was depicted by her in site plan with red colour by letters ‘ABCD’ attached with the plaint. Alleging threat of dispossession on the part of the defendant Sumer Singh of that suit, she sought a decree of permanent injunction.

4.3 Defendant resisted the claim by relying upon the agreement to sell dated 31.05.1999 executed in his favour by Ram Kishan, the husband of plaintiff-Saroj, regarding which he had already filed a suit for specific performance.

4.4 After taking evidence produced by the parties, the suit was dismissed by Ld. Addl. Civil Judge (Sr. Divn), Rewari on 06.04.2010. Appeal [CA N: RT 48 of 2010] filed by Saroj was dismissed on 30.03.2013 by Ld. Additional District Judge, Rewari.

4.5 RSA No.3293 of 2013 has been filed by plaintiff Smt. Saroj against the concurrent findings of the aforesaid judgment and decrees as passed by the Courts below.

5.1 On the other hand, Sumer Singh [Decree Holder of civil suit N: 386 of 1999/2000] filed execution petition [Civil Execution N: 47 of 2005/2009] for implementation of the decree dated 18.10.2004, which was passed by the Court in his suit for specific performance and which was upheld by the Appellate Court on 27.04.2005.

5.2 In the said execution, Smt. Saroj filed third party objections, again on the same ground to the effect that she was the owner of the disputed shop having purchased it by virtue of sale deed dated 03.01.2000 from Hari Singh.

5.3 Necessary issues were framed. Evidence produced by the parties was taken on record and thereafter, the objections were dismissed by the Executing Court of Ld. Addl. Civil Judge (Sr. Divn), Rewari on 11.06.2011. The appeal [CA N: RBT 220 of 2011/2012] filed by the said third party objector Saroj was dismissed by the Appellate Court on 30.03.2013.

5.4 The abovesaid orders have been assailed by Smt. Saroj by filing ESA No.56 of 2013.

5.5 It is how that these two matters are before this Court regarding the same subject matter.

6. Assailing the judgments of the Courts below, dismissing the suit filed by the appellant-Saroj as well as the order of the Executing Court and the Appellate Court, whereby objections of the appellant were dismissed, it is contended by Id. counsel that the Courts below failed to appreciate the fact

that the shop purchased by the appellate-Saroj by virtue of sale deed dated 03.01.2000 was comprised in Rect. No.48, Killa No.10/2/3; whereas the agreement to sell in favour of Sumer Singh was in respect of shop comprised in Rect. No.48, Killa No.11/1/1 & Killa No.11/1/2. Ld. counsel has drawn attention towards the decree for specific performance passed in favour of Sumer Chand, wherein there is no reference of Killa No.10/2/1. It is contended by Id. counsel that as the decree for specific performance is only in respect of the shop falling in Killa No.11/1/2 and 11/1/1 and therefore, the objections were liable to be allowed, as per which the objector-appellant was owner of the shop comprised in Kill No.10/2/3, which had been purchased by her from Hari Singh.

7.1 Refuting the aforesaid contentions, it is argued by Id. counsel for the respondent, who is the decree holder in a suit for specific performance; and the defendant in the suit, which was filed by Saroj that Judgment Debtor-Ram Kishan is none else than the husband of the third party objector-Saroj. Specific attention is drawn towards the fact that agreement to sell in favour of the decree holder was executed on 31.05.1999 and based thereon, the suit for specific performance was filed on 18.11.1999.

7.2 It is argued that Ram Kishan initially sold disputed shop to Hari Singh and then said Hari Singh executed sale deed dated 03.01.2000 in favour of Saroj i.e. the wife of Ram Kishan, by referring to Killa No.10/2/3. Attention is further drawn towards the fact that Ram Kishan was co-sharer in all the three Killa Nos. i.e. 10/2/3, 11/1/1 and 11/1/2 falling in Rect. No.48, as has been rightly observed by the Courts below.

7.3 Ld. counsel further contends that even if the decree in favour of decree holder-Sumer Singh and the consequent sale deed executed in pursuant to the decree, are in respect of Kill No.11/1/1 and 11/1/2, since Ram Kishan was the co-sharer in all the three Killa numbers, therefore, the decree holder shall be presumed to be co-sharer in Killa No.10/2/3 also. It is contended by Id. counsel that shop purchased by the plaintiff is abutting to the road, as referred in the agreement to sell and that after appointment of the Local Commissioner

and after going through the report of the Local Commissioner, the Courts below have rightly dismissed the suit of Saroj and also rightly dismissed the objections filed by her.

7.4 In support of his contention, Id. counsel for the respondent has referred to the Full Bench judgment of this Court in ***Ram Chander Vs. Bhim Singh, 2008 (3) RCR (Civil) 685***, wherein, it was held that when a co-sharer sells land from joint Khewat by reference to specific rectangles and Khasra numbers, the vendee becomes a co-sharer in the entire joint Khewat. It was further held that where a co-sharer in possession of his specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without however asserting exclusive ownership to the portion so transferred and possessed till such time as the joint estate is not partitioned. The full bench of this Court while holding so overruled the earlier judgment reported as ***Lachhman Singh vs. Pritam Chand, 1970 PLR 341*** and approved the Division Bench Judgement of this Court in ***Bhartu Vs. Ram Sarup 1981 PLJ 204***.

7.5 It is also the contention of Id. counsel for the respondent that when there is a concurrent finding of fact recorded by the trial Court and the Appellate Court, the High Court should not interfere. Id. counsel has referred to ***Makhan Lal Vs. Asharfi Lal and others, 1997 (9) SCC 604; Sham Parkash (deceased) by his legal heirs Vs. Yog Parkash and others, 1988 (2) RRR 597; and Laxmidevamma and others Vs. Ranganath and others, 2015 (2) PLJ 454***. The ratio of these authorities is that when based upon the oral and documentary evidences, the Courts below have recorded concurrent finding that plaintiffs are the owner of the property, the High Court was not justified in brushing aside the concurrent findings. In ***Laxmidevamma (supra)***, Hon'ble Supreme Court held further that when there is no substantial question of law arising and there was no substantial ground for re-appreciation of evidence, the High Court in exercise of its jurisdiction under Section 100 CPC, should not

upset the concurrent findings of the facts as recorded by the Courts below unless the said findings are shown to be perverse.

With all these submissions, prayer is made by Ld. Counsel for the respondent for dismissed of both the appeals.

8. I have considered submissions of both the sides and have appraised the record carefully.

9. There is concurrent finding of both the Courts below to the effect that shop in dispute, which has been sold by Ram Kishan firstly to Hari Singh and then Hari Singh in favour of Saroj vide sale deed dated 03.01.2000, is in respect of the same shop, which had been agreed to be sold by Ram Kishan in favour of Sumer Chand vide agreement dated 31.03.1999 and regarding which a decree for specific performance was passed on 18.10.2004 and after upholding of the said judgment, sale deed in favour of Sumer has already been executed.

10. It will be relevant to reproduce the observations of the First Appellate Court made in this regard, while dismissing the appeal [CA N: RBT 48 of 2010] of Smt. Saroj. These read as under: -

“8. Now the main question is whether Hari Singh, who executed the sale deed Ex.PWI/B in favour of the plaintiff Smt. Saroj Devi, was owner of the shop in question and whether the said sale deed is legal and valid and whether on the basis of the said sale deed, plaintiff is entitled to get injunction.

9. Ex.D2 is the copy of jamabandi for the year 1989-90 and after going through the jamabandi Ex.D2, it is clear that Ram Kishan was co-sharer to the extent of 1/4th share in Khasra No. 48 Kila No. 10/2/3 and said Ram Kishan was also co-sharer to the extent of 1/5th share in Khasra No. 48 Kila No. 11/1/1 and he was also co-sharer in Khasra No. 48 Kila No. 11/1/2 on the basis of mutation inheritance of his father Bhani Ram. Therefore, it is crystal clear that Ram Kishan was co-sharer in all the above mentioned three Khasra numbers. Ex.D1 is the copy of Aks-Shajra and after going through Aks-Shajra

Ex.D1, it is crystal clear that Kila Nos. 10/2/3, 11/1/1/ and 11/1/2 are adjoining to each other and Kila No. 10/2/3 is on the pucca road, whereas eastern corner of Khasra No. 11/1/1 also touches the main road. As per the jamabandi Ex.D2, Khasra No. 10/2/3, 11/1/1 and 11/1/2 are having different Khewat and Khatoni numbers but they are adjoining to each other. Plaintiff Smt. Saroj Devi purchased a shop having an area of 14 sq. yard vide sale deed Ex.PW1/B dated 3.1.2000 from Hari Singh and as per the sale deed Ex.PW1/B, the said shop is constructed in Khasra No. 48 Kila No. 10/2/3. But the boundaries mentioned in the sale deed Ex.PW1/B are very significant and as per the boundaries, property of Rattan Lal is situated on the eastern side of the shop sold by Hari Singh in favour of the plaintiff Saroj Devi. Shops of vendor Hari Singh is situated towards western side of the shop sold by Hari Singh in favour of Saroj Devi. As per the jamabandi Ex.D2, Hari Singh was not owner of any part of Khasra No. 48 Kila No. 10/2/3. Vide sale deed Ex.DW5/1, Hari Singh purchased two marla land from Ram Kishan from Khasra No. 48 Kila No. 10/2/3. As per the sale deed Ex.DW5/1, the boundaries of the property purchased by Hari Singh have been clearly mentioned and as per those boundaries mentioned in the sale deed Ex.DW5/1, there is a shop of Ram Kishan towards eastern side and shop of Duli Chand is towards western side and Nohra of Ram Kishan is situated towards southern side. Ex.PW5/B is the site plan of the disputed shop. As per the site plan of the disputed shop Ex.PW5/B, shop of Rattan Lal is towards eastern side of the disputed property and shop of Hari Singh is towards western side of the disputed property. After going through the sale deed in favour of Hari Singh and the sale deed in favour of plaintiff Saroj Devi and the boundaries mentioned in those sale deeds and the boundaries of the disputed property, it is crystal clear that the disputed shop was not sold to Hari Singh by Ram Kishan, vide sale deed Ex.DWS/1 because if the disputed shop had been sold by Ram Kishan in favour of Hari Singh vide sale deed Ex.DW5/1, there must be shop of Rattan Lal towards eastern side and not of Ram Kishan as shown in the sale deed Ex.DW5/1.

10. Plaintiff Smt. Saroj Devi and her husband Ram Kishan want to take the advantage of the location of Khasra No. 10/2/3, 11/1/1 and 11/1/2. As per the agreement to sell Ex.DW1/1, Hari Singh agreed to sell a shop situated on the

road along with a room and the vacant space and he agreed to sell 4-1/2 Marla land in favour of Sumer Singh out of Khasra No. 11/1/1 and 11/1/2. There is no doubt that Khasra No. 48 Kila No. 10/2/3 has not been mentioned in the agreement to sell Ex.DW1/1. But, it has been clearly mentioned that Ram Kishan agreed to sell his one shop constructed on the road. After selling of these properties in favour of Hari Singh, vide sale deed Ex.DW5/1, Ram Kishan was owner of a shop shown towards eastern side of the property sold to Hari Singh and that shop has been mentioned in the agreement to sell Ex.DW1/1. This fact is corroborated by the legal notice Ex.DW2/1 dated 11.11.1999 and said legal notice is regarding the disputed shop because the boundaries of the disputed shop tally with the boundaries mentioned in the legal notice Ex.DW2/1. In the agreement Ex.DW1/1, it has been clearly mentioned that possession of the shop and room has already been given to the purchaser i.e. Sumer Singh. Therefore, defendant Sumer Singh was in possession at the time of execution of agreement to sell Ex.DW1/1. After going through the judgment Ex.DW3/2 which was filed by Sumer Singh against Ram Kishan for specific performance of agreement to sell dated 31.5.1999, it is crystal clear that defendant Ram Kishan has also taken the plea that there is no shop/room constructed in the suit land. It appears that in order to defeat the rights of Sumer Singh, Ram Kishan in collusion with Hari Singh got executed sale deed regarding the shop in question in favour of his wife Saroj Devi mentioning the boundaries of the eastern shop shown in the name of Ram Kishan in the sale deed Ex.DW5/1 executed in favour of Hari Singh.

11. In view of my above discussion, Hari Singh, who is vendor of plaintiff Smt. Saroj, was not owner of the shop in question and in fact the disputed shop was not sold by Ram Kishan, husband of the plaintiff Smt. Saroj, in favour of Hari Singh. Ram Kishan entered into an agreement to sell regarding the disputed shop in favour of defendant Sumer Singh and Sumer Singh was in possession over that shop. Plaintiff wants to take the advantage of location of Khasra Nos. 10/2/3, 11/1/1 and 11/1/2. After going through the Aks-shajra Ex.D1 and the demarcation report Ex.DW7/1 carefully, it is clear that the disputed shop falls in Khasra No. 11/2/3 and 11/1/1. There is no doubt that Ram Kishan entered into an agreement to sell in favour of defendant

Sumer Singh regarding Khasra No. 11/1/1 and 11/1/2. But, after going through the agreement to sell Ex.DWI/1, it is clear that Ram Kishan entered into agreement regarding a shop situated on the road. In these circumstances, plaintiff Smt. Saroj cannot be held to be the owner of the disputed shop merely on the ground that some portion of the disputed shop falls in Khasra No. 10/2/3. As per the Aks-shajra Ex.DI, northern-eastern corner of Khasra No. 11/1/1 touches the road and as Ram Kishan was owner/co-sharer of Khasra No. 10/2/3 and 11/1/1 and therefore, merely/not mentioning in Khasra No. 10/2/3 in the agreement to sell Ex.DW1/1 would not affect the right of the defendant in the disputed shop in any manner. As such, the plaintiff-appellant failed to show that she is owner in possession of the shop in dispute. Accordingly, plaintiff- appellant is not entitled to get any injunction.”

11. Similar observations have been made by Id. Additional District Judge while dismissing the appeal against the order whereby third party objections were dismissed by the Executing Court.

12. After going through the detailed findings of the Courts below, while dismissing the appeal of Saroj; as well as the third party objections in the execution filed by Sumer Singh, this Court does not find any reason whatsoever to interfere in the well reasoned concurrent findings of facts as recorded by the Courts below, which are based upon proper appreciation of evidence. No illegality and perversity is found to be there in any of the impugned orders. No substantial question of law is involved.

13. Consequently, both the appeals are hereby dismissed.

A photocopy of this order be placed on the file of connected case.

19.10.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No