

2024:PHHC:001493

**206-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.SAO-16-2013 (O&M)

Dalwinder Singh

....Appellant

Versus

Bakhtaur Singh and others

..Respondents

2.SAO-17-2013 (O&M)

Dalwinder Singh

....Appellant

Versus

Bakhtaur Singh and others

..Respondents

Date of decision: 08.01.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S.Salar, Advocate for the appellant

Mr. Arihant Jain, Advocate for respondent no.1 and 2

ANIL KSHETARPAL, J (Oral)

1. By this order, two Second Appeals against Order i.e SAO-16-2013 and SAO-17-2013 shall stand disposed of. These two connected appeals have been filed against a common order passed by the Additional District Judge, while remanding the cases back to the trial court.

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

Smt. Charanjit Kaur wife of Sh.Bachittar Singh was owner of the

property in dispute. She is stated to have entered into two different alleged agreements to sell; one in favour of Sh.Bakhtaur Singh and Sh.Gurdeep Singh and second in favour of Dalwinder Singh in respect of the suit property. The suit filed by Sh.Bakhtaur Singh and Sh.Gurdeep Singh for the specific performance of the agreement to sell was decreed on 16.09.2009 whereas the suit filed by Sh.Dalwinder Singh was decreed on 25.10.2011. During the pendency of the suit filed by Sh.Dalwinder Singh, Sh.Bakhtaur Singh and Sh.Gurdeep Singh filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908, with a prayer to implead them as defendants, which was dismissed by the trial court. They filed a revision petition (CR-6765-2011 titled as 'Bakhtaur Singh and another vs. Dalwinder Singh and another') in which further proceedings before the trial court were stayed. However, in the meantime, the suit was decreed in favour of Sh.Dalwinder Singh. On 23.07.2012, the revision petition was disposed of with the following order:-

“Counsel for respondent No.1/plaintiff states that this revision petition has been rendered infructuous because the suit out of which this revision petition has arisen, has since been decreed and even first appeal has been preferred by proforma respondent No.2/defendant.

In view of the aforesaid, the instant revision petition is disposed of as having been rendered infructuous with liberty to the petitioners to approach lower appellate court for proper relief in accordance with law and if they

do so, impugned order of the trial court shall have no bearing on adjudication of their claim.”

3. Sh.Bakhtaur Singh and Sh.Gurdeep Singh filed an appeal against the judgment and decree passed in favour of Sh.Dalwinder Singh on 25.10.2011, which was accepted and the matter has been remitted back to the trial court to decide afresh.

4. Learned counsel representing the appellant submits that the First Appellate Court has erred in remanding the case back to the trial court for calling the report.

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

6. In this case, re-trial of the entire case shall be necessary in order to determine, who has a superior right amongst the purchasers namely Sh.Dalwinder Singh or Sh.Bakhtaur Singh and Sh.Gurdeep Singh. Sh.Bakhtaur Singh and Sh.Gurdeep Singh have to be given an opportunity to file the written statement and cross-examine the witnesses produced by the plaintiff. They have also to be granted opportunity to produce their evidence.

7. In these circumstances, only calling a report from the trial court would not be sufficient.

8. Keeping in view the aforesaid facts, no ground to interfere is made out.

9. Hence, dismissed.

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(ANIL KSHETARPAL)
JUDGE

Yes/No