

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 4665 of 2018 (O&M)

Binder Singh and Another
Versus
... Appellant(s)

Santa Singh (Deceased) through his Legal Representatives
... Respondent(s)

AND

2. Regular Second Appeal No. 4770 of 2018 (O&M)

Binder Singh and Another
Versus
... Appellant(s)

Santa Singh (Deceased) through his Legal Representatives
... Respondent(s)

DATE OF DECISION: 19.01.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Arihant Jain and Mr. Arun Jindal, Advocates
for the appellant(s).

Anil Kshetarpal, J.
CM-426-C-2024 In RSA-4665-2018

1. In view of the prayer made in the application, which is supported by an affidavit, the same is allowed, subject to all the just exceptions. The proposed legal representatives, named in para 2 of the application, are the Class-I heirs of respondent-Santa Singh, who is stated to have died on 13.07.2021. They are permitted to be brought on record as the legal heirs of the respondent-Santa Singh, for the purpose of defending the present appeal.

CM-451-C-2024 In RSA-4770-2018

2. In view of the prayer made in the application, which is supported by an affidavit, the same is allowed, subject to all the just

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exceptions. The proposed legal representatives, named in para 2 of the application, are the Class-I heirs of respondent-Santa Singh, who is stated to have died on 13.07.2021. They are permitted to be brought on record as the legal heirs of the respondent-Santa Singh, for the purpose of defending the present appeal.

RSA-4665-2018 And RSA-4770-2018

3. In these two connected regular second appeals, the correctness of the concurrent findings of facts, arrived at by both the Courts below, is challenged by the appellants, who were the defendants in the suit for injunction, whereas the plaintiffs in the counter-claim filed by them.

4. Respondent-Santa Singh filed a suit for the grant of decree for permanent injunction claiming that he is owner in possession of the house in dispute. He claims that some portion of the property was allotted to his father, namely Ujjal Singh, whereas the remaining part was purchased by him from Kashmir Singh and Hardeep Singh sons of Shingara Singh through an agreement in the year 1977. He had constructed five portions on the disputed property in order to settle his five married sons, who reside in the house along with their respective families. Previously, Jagtar Singh, his son, filed a suit against Santa Singh and others claiming the decree of permanent injunction with regard to some portion of the disputed property which was withdrawn by him by giving statement on 15.11.2013.

5. The appellants (the defendants before the trial Court), while contesting the suit, claimed that they purchased the property from Jagtar Singh on the basis of the agreement to sell dated 11.11.2013, for a sum of

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of the property. It shall be noted here that the aforesaid agreement dated 11.11.2013, is alleged to have been executed with respect to 40 marlas house which includes the entire property left behind by Ujjal Singh as well as the additional portion which was alleged to have been purchased by Santa singh. Both the Courts below, on the appreciation of evidence, came to the conclusion that the parties have failed to prove their title. However, on the appreciation of evidence, both the Courts below came to the conclusion that it is Santa Singh who is in settled possession of the suit property along with his family. It shall be noted here that between Jagtar Singh and other family members, there was another litigation which was decided on 02.03.2015 (Ex.D43) by the First Appellate Court. In that litigation also, it was held that originally, the property was owned by Ujjal Singh and he had bequeathed the property in favour of his five grand children namely Jagtar Singh, Jaswinder Singh, Gurdev Singh, Rajwinder Singh and Kamaljit Singh, who are the sons of plaintiff-Santa Singh. Furthermore, DW.4-Jaswinder Kaur has admitted the photographs showing the possession of Santa Singh and his family. Thus, both the Courts below decreed the suit and dismissed the counter-claim filed by the appellants.

6. The learned counsel representing the appellants contends that Santa singh also failed to prove any right, title or interest in the property and he had no locus to file the suit. He submits that Jagtar Singh, being the owner of 1/5th portion of the property, had sold the same for the valuable consideration of ₹20,00,000/- in favour of the appellants.

7. This Court has considered the submissions of the learned
counsel representing the appellants.

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8. As already noticed, both the Courts below have only granted the decree of permanent injunction without deciding the question of right, title or interest in the property. The appellants claim the property on the basis of an unregistered agreement. The aforesaid agreement shows that the value of the property was ₹20,00,000/-. The sale of immovable property valuing more than ₹100/- could not be executed without the registration of the sale deed. Moreover, the pivotal issue that is involved in the present case for adjudication is with respect to actual possession of the property. The appellants failed to prove that they are in possession of the disputed property.

9. Moreover, the scope of interference in the concurrent findings of facts, arrived at by both the Courts below is limited, unless the judgments passed by the Courts below suffer from any material irregularity, illegality and perversity which goes to the root of the case. The First Appellate Court is not expected to be interfered with.

10. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

11. The miscellaneous application(s) pending, if any, in both the appeals, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

January 19, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No