



RSA-809-2025(O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-809-2025(O&M)
Reserved on : 17.03.2025
Date of decision:21.03.2025**

Deen Dayal Sharma

..Appellant

Versus

Sheela Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Som Nath Saini, Advocate for the appellant

Mr. Anil Bansal, DAG, Punjab, for respondent no.5

ANIL KSHETARPAL, J. (Oral)

1. Brief facts:-

1.1 Defendant no.6 assails the correctness of the First Appellate Court's judgment, which in turn, has reversed the judgment of the trial court.

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

1.3 The plaintiff Smt. Sheela Devi purchased plot no.55 Vikas Nagar, Baltana, Zirakpur measuring 145 sq. yards through two separate sale deeds executed on 16.11.2010 from its owner Krishan Avtar son of Jagan Nath. It has come on record that Mahinder Singh son of Prem Singh carved out a colony in the year 2002-03, after purchasing the property from Smt. Saroj Khullar. Through two different sale deeds executed in the years 2002

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and 2003, plot no.55 was sold to Krishan Avtar. Krishan Avtar got sanctioned a building plan but got it constructed somewhere else and while taking benefit of the aforesaid fact, defendants no. 1 and 2 encroached upon the same. Krishan Avtar sold the property in favour of Anil Swaroop who in turn sold the property in favour of Smt. Sheela Devi. Two sale deeds directly were executed by Krishan Avtar in favour of Smt. Sheela Devi, who filed suit for declaration, permanent and mandatory injunction directing defendant no. 1 to 6 to handover possession. The defendants contested the suit claiming that defendant no.1 and 2 had purchased the property from Sadhu Singh in 2011. Defendant no.1 and 2 further sold the property to Sampat Kumar defendant no.5 vide sale deed dated 25.10.2012, who in turn, sold the property to defendant no.6 on 26.04.2013. The trial court dismissed the suit on the ground that parties have purchased the property out of joint khewat and hence, the plaintiff may seek partition, however, decree for partition could not be granted. The First Appellate Court allowed the appeal on the ground that plot no.55, Vikas Nagar, Baltana, Zirakpur has been sold out of a carved colony and hence, the plaintiff has not become co-sharer. In fact, she is an exclusive owner of the property. Consequently, the first appeal filed by the plaintiff was allowed.

2. Arguments Addressed:-

2.1 Learned counsel representing the appellant has made the following submissions:-

i) the First Appellate Court has wrongly relied upon police inquiry report Ex.P5.



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ii) the possession of the plot is with the defendant and hence, no decree for possession could be passed.

iii) the findings of the First Appellate Court to the effect that the plaintiff became owner by virtue of two sale deeds is contradictory.

iv) Sadhu Singh was co-owner in the property and hence, he was entitled to sell the same in favour of defendant no. 1 and 2.

v) amount has been returned to the plaintiff. Hence, she cannot claim property.

vi) the appellant has purchased the plot no.55 in New Vikas Nagar and not in Vikas Nagar.

3. Discussion:-

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

3.2 The plaintiff, in order to prove her case, has produced a police inquiry report Ex.P5 conducted by Economic Offences Wing, Zirakpur. The aforesaid inquiry report has just been referred by the First Appellate Court. The report was proved on record. The plaintiff has produced the copies of the two sale deeds executed in her favour by Krishan Avtar. It has also been proved by the plaintiff that Mahinder Singh sold the property in favour of Krishan Avtar by virtue of two different sale deeds. The plaintiff also produced evidence to prove that building plan was got sanctioned by Krishan Avtar from Municipal Committee. In these circumstances, the court has relied upon various documents including the police inquiry report.

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3.3 The second submission has no legs to stand because the plaintiff has sought decree for mandatory injunction directing defendants no. 1 to 6 to hand over physical, actual and vacant possession of the property.

3.4 With regard to next submission, the findings of the First Appellate Court is not contradictory. It has been found that in 2002 and 2003 the colony was carved out by Mahinder Singh son of Prem Singh. Plot no.55, Vikas Nagar, was sold to Krishan Avtar who in turn sold to Smt. Sheela Devi, plaintiff. Hence, the concept of co-sharer with reference to a khata number cannot be invoked. Once the sale is with respect to a specific plot in a colony, the plaintiff cannot be said to have become co-sharer in the joint khewat.

3.5 Smt. Sheela Devi has purchased the property by virtue of two sale deeds. There is some evidence that Krishan Avtar refunded Rs. 6,00,000/- however, Anil Swaroop who has taken away the major chunk of the payment is yet to return the amount. Moreover, the sale deed in favour of Smt. Sheela Devi has never been cancelled or revoked or she has not surrendered her ownership.

3.6 The last submission also has no substance because the First Appellate Court has found that the plot in question is located in Vikas Nagar and the defendant has failed to prove that the property is in New Vikas Nagar. Overwhelming evidence has been produced to prove that plot no.55 has been encroached upon by the defendants including appellant.

4. Decision:-

4.1 Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.



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- 4.2

Hence, the Regular Second Appeal stands dismissed in limine.
- 4.3

All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

21.03.2025

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No