



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

RSA-2818-2015

Date of decision : 05.03.2025

SHANTI DEVI

....Appellant

Versus

RAM SINGH AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Mayur Kanwar, Advocate
 for the appellant (through Video Conferencing)

Mr. Ravi Kumar Girdhwal, Advocate and
Mr. Rohit Mittal, Advocate for respondent No.1.

Mr. Sandeep Kumar Yadav, Advocate and
Ms. Sangeeta Yadav, Advocate for respondent No.2.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondents as the defendants.

3. Plaintiff filed suit seeking decree of possession claiming herself to be owner in possession of the suit land measuring 1 Kanal 6 Marlas as detailed out in the contents of the plaint on the strength of registered Sale Deed No.1560, dated 30.10.1991. She claims that defendants have encroached upon her land comprised in Killa No.20//23/1/3/2 by raising construction of their residential houses. She got suit land demarcated by



moving an appropriate application before AC-IIInd Grade, Narnaul. On demarcation, it was found that defendant No.1 Ram Singh had encroached upon 882 square feet of land. It was also found that defendant No.2 Bhagwan Singh had encroached upon 352 square feet of land. She thus sought possession.

4. Suit was contested by the defendants denying the right or title as claimed by the plaintiff. Defendants claimed that the sale deed propounded by the plaintiff is illegal, null and void and not binding on their rights. Prior to executing sale deed in favour of the plaintiff, the vendor had already sold his share in Killa No.20//23. Defendant No.1 claimed to have purchased 1 Kanal land from Girdhari Lal the vendor of the plaintiff vide registered sale deed dated 21.07.1987. Likewise, defendant No.2 denying the right of the plaintiff claimed to have purchased 10 Marlas of land out of Killa No.20//23 and raised construction of the residential house. He further claimed that his wife also purchased 5 Marlas of land out of Killa No.20//23 vide registered sale deed dated 31.07.1987.

5. Suit filed by the plaintiff was put to trial by the Court of First Instance, framing the following issues :

- “1. Whether plaintiff is owner of the property in question by virtue of sale deed vide bearing no. 1650 dated 30.10.1991?
OPP
2. Whether defendants have illegally encroached upon the property in question as alleged? OPP
3. If above issues are proved, whether plaintiff is entitled to decree for possession as prayed for ? OPP.



4. Whether the suit is not maintainable in the present form?
OPD
5. Whether the plaintiff has no locus-standi to file the present suit? OPD
6. Whether the plaintiff is estopped by his own act and conduct from filing the suit?OPD
7. Whether plaintiff has not come in the court with clean hands concealed material facts from the court? OPD
8. Relief.”

6. While returning finding on issues No.2 and 3, the Court of First Instance found that the plaintiff miserably failed to prove that any portion of the land bearing Killa No.20//23/1/3/2 was owned and possessed by her and held that she was not entitled for decree of possession.

7. Dissatisfied plaintiff, approached Lower Appellate Court.

8. Affirming findings recorded by the Court of the First Instance, Lower Appellate Court observed as under :

15. It is the claim of the plaintiff that she purchased the land measuring 1 kanal 6 marla as per jamabandi for the year 1997-98 and jamabandi for the year 1997-98 Ex.P1 shows that Smt. Shanti Devi must have purchased 1 kanal 6 marla of land out of total land comprised in khewat No.87 khatoni No.126 from Girdhari, however, on record it has not come as to how much was the land owned by Girdhari. From the mutation No.665 it can be gathered that Girdhari alongwith his brother Raj Kumar and sister Ram Pyari owned 6 kanal 8 marla of land comprised in rectangle No.20 killa No.23 and if it is so, then Girdhari had only 2 kanal 3 marla of land and out of his share he had sold 1 kanal of land vide registered sale deed dated 21.07.1987 Ex.DW5/B to Ram Singh, the defendant No.1 and vide sale deed dated 31.07.1987 he had sold 5 marla of land to one Phoola and vide sale deed dated



13.05.1983 Girdhari had also sold 10 marla of land alongwith his brother Raj Kumar to Bhagwana Ram and Somdutt, sons of Mangal Ram. So, vide three different sale deeds Girdhari had already sold 1 kanal 10 marla of land to different persons like Ram Singh, Phoola and Bhagwana and he was left with only 13 marla of land in rectangle No.20 killa No.23 but mutation No.740 sanctioned on 18.08.1995 Mark A shows that he sold 1 kanal 6 marla of land out of rectangle No.20 killa No.23 which he was not entitled to sell as he was only left with 13 marla of land in rectangle No.20 killa No.23. Thus, the documentary evidence brought on the record shows that plaintiff could not have been owner of 1 kanal 6 marla of land.

16. Furthermore, non-production of registered sale deed No.1650 dated 30.10.1991 vide which the plaintiff alleged to have purchased land from Girdhari amounts to withholding of best evidence because only from the sale deed of plaintiff it could have been inferred as to on which side of the land of plaintiff there was land of other persons. Furthermore, the plaintiff has purchased only share in rectangle No.20/23. So, she has become the co-sharer with other co-owners like Ram Singh, Bhagwana and Phoola and the plaintiff could have filed suit for partition of her share. So, until and unless it is proved that plaintiff was in possession of a specific portion of land, no findings can be given that the defendants have encroached upon any portion of the land of the plaintiff. On the basis of demarcation report dated 12.09.2002 Ex.PW4/A, no relief can be granted because Babu Lal, Girdawar Halka who demarcated the land has appeared as PW4 and has categorically stated that he had not given any notice to Bhagwan Dass, the defendant. Also he has admitted that the building shown in red colour in the site plan may be 19-20 years old and this portion shown in red colour which is a building shown to have been constructed by Ram Singh is opined to have been constructed 19-20 years before, meaning thereby the construction must have been raised in the year 1986-87 and thus, at the time of purchase 1 kanal 6 marla of land by the plaintiff in the year 1991, this building shown in red colour was



very much in existence and so, it can be said that the portion shown in red colour was encroached upon by Ram Singh in her absence while she was out of village with her husband who was posted in Railway Department. So, even from the demarcation report Ex.PW4/A it cannot be held that any encroachment was made by the defendants after the purchase of land by the plaintiff from Girdhari. Moreover, encroachment is in the shape of houses and houses cannot be constructed within a few days and it takes lot of time. So, viewing from any angle, it can be held that no encroachment has been done by the defendants after the sale deed of the plaintiff.

9. Ld. counsel appearing for the appellant has assailed the findings recorded by the Courts below and asserts that pursuant to order dated 23.07.2024 land has been demarcated and the defendants have been found to be in possession of part of Rectangle No.20, Killa No.23.

10. Per contra, counsel for the respondents submits that the plaintiff asserted her right on the basis of sale deed which she failed to prove and thus the Courts below have rightly non-suited the plaintiff.

11. I have heard counsel for the parties and have gone through records of the case.

12. In the considered opinion of this Court, in order to succeed in the suit, the plaintiff was required to prove that she purchased land measuring 1 Kanal 6 Marlas vide sale deed dated 30.10.1991 from a rightful owner. It is not in dispute that Girdhari Lal was owner to the extent of 2 Kanal 3 Marlas of land and owned the same along with his brother Raj Kumar and sister Ram Pyari out of total land measuring 6 Kanal 8 Marlas.



Plaintiff claims to have purchased 1 Kanal 6 Marlas of land from Girdhari Lal vide Sale Deed dated 30.10.1991 however, prior thereto, Girdhari had already sold 1 Kanal of land vide registered sale deed dated 21.07.1987 Exhibit DW5/B in favour of Ram Singh. He also sold the land measuring 5 Marlas vide Sale Deed dated 31.07.1987 in favour of Phoola. Vide Sale Deed dated 31.05.1983 Girdhari along with his brother Raj Kumar sold 10 Marlas of land to Bhagwana Ram and Somdutt sons of Mangal Ram. It is in these circumstances that the Courts below concluded that on the day the plaintiff claimed to have purchased 1 Kanal 6 Marlas of land from Girdhari, he was not entitled to sell land more than 13 Marlas. Pure findings of facts have been recorded by the Courts below. There is no evidence on record to prove that Girdhari Lal the vendor of the plaintiff was competent to sell 1 Kanal 6 Marlas of land in favour of the plaintiff.

13. In view thereof, finding no merit in the instant appeal, the same is ordered to be dismissed.

March 05, 2025

(Pankaj Jain)
Judge

Dpr

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