

Anand Dev Puri and Others

Vs

Guriqbal Singh and Others

Civil Appeal No. 2607 of 1989

(N. P. Singh, Faizanuddin JJ)

30.08.1996

JUDGMENT

FAIZAN UDDIN, J. -

1. This is an appeal filed by the plaintiffs against the order dated 22-7-1988 passed by the High Court of Punjab and Haryana dismissing the plaintiffs' appeal against the judgment dated 25-9-1987 passed by the Additional District Judge, Sangrur setting aside the judgment and preliminary decree dated 25-5-1984 passed by the Sub-Judge, 1st Class Malerkotla for possession by partition of the house in suit in favour of the plaintiffs and defendants-Respondents 1 and 3 to 5 herein to the extent of 1/7th share each in the house in dispute.

2. Briefly stated the facts of the case are that the plaintiffs-appellants brought a suit for separate possession by partition of the house in suit to the extent of their share against the defendants-respondents by contending that the house in suit belonged to their father Ishar Mal who died on 10-1-1960 leaving behind him his widow Dhan Devi, since deceased, three sons, namely, Anand Dev, plaintiff-Appellant 1, Bhushan Kumar Puri (Defendant 2, Respondent 3 herein), Rajinder Pal Puri (Defendant 1, Respondent 2 herein) and four daughters, namely, Gyanwati, plaintiff-Appellant 3, Sita Devi (Defendant 3, Respondent 4 herein), Nand Rani, (Defendant 4, Respondent 5 herein) and Pushpa Devi, plaintiff-Appellant 2. The plaintiffs' case was that on the death of their father Ishar Mal each of the eight heirs named above became owners of 1/8th share in the house in question, being the widow, sons and daughters of late Ishar Mal. According to the plaintiffs, on the death of their mother Dhan Devi the remaining three sons and four daughters of Ashar Mal inherited 1/7th share each in the house in suit. But the defendant-respondent Rajinder Pal Puri one of the sons of Ashar Mal claiming to be the owner of 1/3rd share in the house sold out the same to the defendant-Respondent 1, Guriqbal Singh by a registered sale deed dated 2-12-1977. The plaintiffs-appellants took the plea that Rajinder Pal Puri had only 1/7th share in the house and he could not have validly sold 1/3rd share in the house to Respondent 1, Guriqbal Singh.

3. Defendants 1, 3 and 4, namely, Rajinder Pal Puri, Sita Devi and Nand Rani filed a common written statement admitting that the house in dispute belonged to Ishar Mal and after his death it was inherited by the plaintiffs and Defendants 1 to 4.

4. Defendant Rajinder Pal Puri admitted that he had sold the said portion of the house in dispute to Defendant 5, Respondent 1 herein, Guriqbal Singh but he took further plea that it was a fictitious sale to teach a lesson to his sons and wife who had become disobedient. The defendant-Respondents 1, Guriqbal Singh filed a separate written statement by traversing all the plaint allegations and took the plea that the house in question only belonged to Plaintiff 1, Anand Dev Puri and the defendants

Rajinder Pal Puri and Bhushan Kumar Puri, the three sons of deceased Ishar Mal, each having 1/3rd share in the same who had effected private partition among themselves and each one of them had separate possession of 1/3rd share of the house and that Rajinder Pal Puri was the owner in possession of 1/3rd share which he sold out to him by a registered sale deed dated 2-12-1977 with delivery of possession.

5. The trial court decreed the plaintiffs' suit and passed preliminary decree for separate possession by partition holding that the house belonged to Ishar Mal and after the death of Ishar Mal and his widow it was inherited by his three sons and four daughters named above, each of them having 1/7th share in the same. The trial court also on evaluation of evidence took the view that there was no private partition amongst the three sons of deceased Ishar Mal and that the defendant-respondent Guriqbal Singh had failed to prove that he was a bona fide purchaser without having any notice of title or share of daughters of Ishar Mal in the said house. The trial court further took the view that Rajinder Pal Puri, one of the sons of late Ishar Mal had only 1/7th share in the house and he could not have sold 1/3rd share to the respondent-Guriqbal Singh. On these findings the trial court, as said earlier, passed a preliminary decree for separate possession by partition in favour of the sons and daughters of deceased Ishar Mal to the extent of 1/7th share each and only 1/7th share to respondent-Guriqbal Singh, the same being the share of his vendor Rajinder Pal Puri.

6. However, the learned first appellate court took a different view and, therefore, set aside the judgment and decree passed by the trial court by holding that the house belonged to the three sons of late Ishar Mal and since they had effected private partition the defendant-Rajinder Pal Puri had validly transferred his 1/3rd share to the defendant-Guriqbal Singh. The High Court dismissed the second appeal of the plaintiffs summarily.

7. The learned counsel for the appellants vehemently urged that the learned first appellate court misdirected itself in evaluating the evidence on record ignoring the admitted facts which resulted into an erroneous finding and miscarriage of justice. He also submitted that the High Court was not justified in dismissing the appeal summarily without examining the correctness of the judgment of the first appellate court which is erroneous on the face of it. We find considerable force in the submissions advanced by the learned counsel for the appellants. It can hardly be disputed that Ishar Mal after his death left behind him his widow, three sons and four daughters whose names have been stated in the earlier part of this judgment. There is overwhelming oral and documentary evidence to establish that the house in dispute belonged to Ishar Mal, the property in suit would devolve to the three sons and four daughters, each having 1/7th share in the same. The learned first appellate court patently committed a serious error in holding that the three sons of deceased Ishar Mal were the owners of the house in suit only on the basis of some municipal entry ignoring all other material facts and evidence, documentary and oral on record. Rajinder Pal Puri one of the sons of Ishar Mal had only 1/7th share. He, therefore, could not have sold out 1/3rd specified portion of the house in suit in the absence of any partition amongst the shareholders. At best, Rajinder Pal Puri could have sold out his 1/7th share in the house which was the joint property of all the sons and daughters. Respondent 1 Guriqbal Singh, therefore, would be entitled only to the extent of 1/7th share in the house by partition. In these facts and circumstances the trial court was fully justified in passing the preliminary decree for possession by partition of the house granting 1/7th share to each of the shares (except Rajinder Pal Puri) including the defendant Guriqbal Singh, who would be entitled to 1/7th share of Rajinder Pal Puri.

8. In the result the appeal succeeds and is hereby allowed with costs. The judgment and decree passed by the first appellate court and the High Court are set aside and the judgment and decree

passed by the trial court is restored. We quantify the cost of this appeal to Rs 3000 to be paid by Respondent 1, Guriqbal Singh to the plaintiffs-appellants.