

**(2012) 02 AHC CK 0167**

**Allahabad High Court**

**Case No:** Second Appeal No. 453 of 2009

Smt. Jagrani Devi

APPELLANT

Vs

Arvind Pandey

RESPONDENT

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**Date of Decision:** Feb. 9, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11

**Hon'ble Judges:** Sibghat Ullah Khan, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Hon'ble Sibghat Ullah Khan, J.

Heard learned counsel for the parties at the admission stage.

2. This is plaintiff's second appeal arising out of O.S. No.23 of 1994 which was dismissed on 24.02.2007 by Additional Civil Judge, Senior Division, Court No.14, Allahabad. Against the said decree plaintiff appellant filed Civil Appeal No.58 of 2007, which was dismissed on 06.04.2009 by A.D.J./ Special Judge, S.C. & S.T. Act, Allahabad hence this second appeal.

3. Matter relates to a portion of a building known by the name of Phoolpur Kothi situate at Muththiganj, Allahabad. There are three co-sharers of the entire property. Lal Chand and Rai Amarnath are owners to the extent of one fourth share, Murlidhar to the extent of one fourth share and Ram Lakhan and Ram Lal to the extent of half share. The case of the plaintiff was that she purchased half share of Ram Lakhan and Ram Lal through sale deed dated 02.03.1988 and that one fourth share of Lal Chand and Rai Amarnath had been given to her by them through Ijzatnama executed by their attorney on 28.01.1974 hence plaintiff became owner of three fourth portion.

4. Murlidhar who had one fourth share sold the same to Ravi Sahakari Samiti and Ravi Sahakari Samiti sold the property regarding which suit had been filed to the defendant respondent Arvind Pandey through registered sale deed dated 29.04.1987 i.e. about one year before the sale deed of the plaintiff. The part of the property in dispute was shown by the plaintiff to be 85 feet / 30 feet i.e. about 285 square yards, however at other places it was mentioned as 260 square yards. The courts below after thorough examination came to the conclusion that property in dispute was the same which was purchased by the defendant respondent through sale deed dated 29.04.1987.

5. The courts below held that the entire Phoolpur Kothi was situate in Plots No.708, 709 and 710 (old number 734) while through the sale deed of the plaintiff building situate in Plot No.709 had been sold. In the sale deed building was described by boundaries also. Courts below held that plaintiff completely failed to prove that what was the total area of building Phoolpur Kothi. However on the basis of evidence brought on record by the defendant respondent the total area of the kothi was found to be 122225 square feet (about 13600 square yard) i.e. about 50 times of the sold area. Courts below held that as property in dispute had been sold to the defendant earlier than to the plaintiff hence defendant's sale deed should prevail.

6. If the entire property (kothi) had not been partitioned between the three sets of co-sharers then specific portion could not be sold either to the Sahkari Samiti or to the plaintiff and in such situation prior sale deed will have to prevail particularly when pursuant thereto defendant had made construction. It was not alleged that any prior partition had taken place. If Murlidhar, who had one fourth share sold the specific portion to the Sahkari Samiti and thereafter a part thereof was sold by the Sahakari Samiti to the defendant then only other co-sharers could object which they did not do.

7. Regarding Ijzatnama of 1974, the courts below recorded the following finding against the plaintiff appellant:

(1) Ijzatnama was in respect of entire property in dispute, area 85 feet by 30 feet, however in the plaint it was stated that only one fourth share in the said property had been given through Ijzatnama.

(2) In the Ijzatnama it was mentioned that it was being given to the plaintiff and Hub Narain Pandey, however no mention was made regarding Hub Narain Pandey in the plaint.

(3) In case Ijzatnama of the entire property in dispute had been executed in favour of plaintiff then there was no need for her to get the sale deed of part of the same property executed in her favour on 02.03.1988.

8. I do not see any reason to differ from the well reasoned findings of the courts below which are based on perusal of entire evidence.

9. The following authorities cited by learned counsel for the appellant do not advance the appellant's case:

(i) [Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others,](#)

(ii) H. Hussain Vs. Abdul Majeed, 2002 ACJ 204 (SC)

(iii) R.K. Nath Vs. Krishna, 2003 ACJ 633 (SC)

(iv) Birbal Singh Vs. Chandra Deo Singh, 2011 (112) RD 147

10. Accordingly, there is no merit in the second appeal hence it is dismissed under Order XLI Rule 11, C.P.C.