

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 538 of 2012 (O&M)

Date of decision : 27.05.2015

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Sheela

.....Appellant

Versus

Vidya Wati and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Gulzar Mohd, Advocate for the appellant.

Mr. K.S Boparai, Advocate for the respondents.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The appellant-defendant (hereinafter referred to as 'the defendant') has come up in regular second appeal against the judgment of reversal dated 6.9.2011 passed by the Additional District Judge, Ludhiana, whereby an appeal against the judgment and decree dated 1.12.2010 passed by the Civil Judge (Junior Division) Khanna, District Ludhiana was allowed. Vide the judgment of the appellate Court the judgment of the trial Court was set aside and suit of the plaintiffs-respondents (hereinafter referred to as 'the plaintiffs') for possession and permanent injunction was decreed.

Civil Suit No.351 of 19.10.2002 for permanent injunction

was filed by the present appellant-defendant against Gore Lal, plaintiff no.11. The suit was contested by both the parties and a decree of permanent injunction was passed in favour of the defendant who was plaintiff in that suit and Gore Lal (plaintiff no.11), who was defendant in that suit was restrained from dispossessing Sheela Rani from the house in question except in due course of law vide judgment and decree dated 24.12.2004 passed by the Civil Judge (Junior Division) Khanna. However liberty was granted to the parties to get the question of title of the suit property decided in the appropriate proceedings.

One Basanta Ram was the original inhabitant of Village Ikolha, Tehsil Khanna, District Ludhiana. The property in suit was inherited by Basanta Ram from his ancestors. The property in suit was situated within abadi lal lakir and there was no entry of the property in suit in the revenue record to show the title of anybody. Basanta Ram died about 40 years ago leaving behind four sons namely Bhag Chand, Wazir Chand, Gore Lal, Surinderpal and one daughter namely, Laxmi Devi as his only legal heirs in equal shares. Bhag Singh also died about 30 years back leaving behind plaintiffs no. 1 to 5 as his legal heirs in equal shares. Wazir Chand son of Basanta Ram also died leaving behind plaintiffs no. 7 to 10 as his legal heirs in equal shares. Laxmi Devi daughter of Basanta Ram also died about 20 years back leaving behind plaintiff no.6 Rajinderpal as her only legal heir. It is further submitted that according to Hindu Succession Act, Gore Lal plaintiff no.11 and

Surinderpal plaintiff no.12 are entitled to 1/5th share each in the suit property. Similarly legal heirs of Bhag Chand Wazir Chand and Laxmi Devi are entitled to 1/5th share from the suit property. It is further submitted that property shown in green colour in the site plan which adjoins the suit property on the northern side is under the possession of one Shiv Rattan son of Sh. Devi Dayal. Shiv Rattan had purchased this property from his mother Vidya Wati widow of Sh. Devi Dayal vide registered sale deed date 30.1.1989. Shiv Rattan has raised construction in the property which adjoins the suit property. The defendant and her husband Jit Singh belonged to U.P and they are not the original inhabitants of Village Ikolaha. The possession of defendant over the suit property is permissible as a licensee. The plaintiffs being the owners of the property in suit have the right to seek possession of the suit property from the defendant. Plaintiffs made repeated requests to the defendant to deliver the possession of the property in dispute to them, but to no effect. Hence, the suit was filed.

Upon notice, the written statement was filed by the defendant taking the plea that Bhag Chand son of Basanta Ram sold the property in question about 35 years ago to Jit Singh the husband of the defendant for a consideration of Rs.99/- only. The property in question is situated in red line of Vilalge Ikolaha and since its purchase Jit Singh remained in possession and after his death, defendant and her family members are in possession of the suit property as owners.

The trial Court dismissed the suit of the plaintiffs on the ground that they have failed to show that the suit property in question was owned by Basanta Ram. The plaintiffs had placed on record Ex. P-1 which was a sale deed by one Vidya Wati in favour of Gurmukh Singh in which there is a reference that on the eastern side of the property, the property of Basanta Ram is situated. The sale deed was executed in 30.1.1989. The plaintiffs were not extended any benefit to identify the property of Basanta Ram as per Ex. P-1 as they had not been able to plead the exact date of death of Basanta Ram. Plaintiffs are also estopped by their own conduct in the civil suit No. 351 dated 19.10.2002 filed for permanent injunction in which Gore Lal-plaintiff no.11 was the defendant and he had taken the plea that he was owner in possession of the property. The possession of the present defendant Sheela Rani was upheld by the civil Court vide judgment and decree dated 24.12.2004.

The lower appellate Court on appeal has reversed the findings recorded by the trial Court. The earlier suit filed by the defendant was for permanent injunction and the suit was decreed on the ground that the defendant was found to be in possession of the suit property. However, while decreeing the suit, an opportunity was granted to the parties to get their question of title decided. In the above said suit only present plaintiff no.11 Gore Lal was the party as defendant and the other plaintiffs of the present suit were not made party. Even if, said Gore Lal had not taken the plea that Sheela Rani is merely a licensee in the said suit, it would not operate as an

estoppel against the other plaintiffs as they were not a party in that suit. The lower appellate Court perused Ex. P-7 copy of the plaint filed by the defendant-Sheela Rani in the earlier suit in which there was no mention about the oral sale deed made by Bhag Chand son of Basanta Ram in favour of her husband Jit Singh for a sales consideration of Rs.99 only about 33 years ago. There was a bald statement of the defendant Sheela Rani that she is owner and in possession of the property in dispute. Hence the plea of oral sale deed in favour of Jit Singh by Bhag Chand son of Basanta Ram was taken for the first time in the written statement filed in the suit. Moreover as per the pleadings set out by the plaintiffs, Basanta Ram died about 40 years ago leaving behind four sons namely Bhag Chand, Wazir Chand, Gore Lal, Surinderpal and one daughter namely, Laxmi Devi as his only legal heir in equal shares. Therefore, Bhag Chand was not the exclusive owner of the property in dispute. He was having only 1/5th share in the property in dispute being inherited from Basanta Ram as such he had no right to sell the share of other legal heirs of Basanta Ram. Her own witness DW-3 Satwant Kaur has admitted in her cross-examination that Sheela Rani defendant and her husband are the original inhabitants of U.P. Since there was no evidence that Sheela Rani was the owner of the suit property and her earlier suit had been decreed only for permanent injunction as she was in possession of the suit property. The plaintiffs as well as the defendants did not dispute the execution of sale deed dated 30.1.1989 by Vidya Wati in favour of Shiv Charan.

Hence as per the sale deed Ex. P-1 property adjoining the plot of Jit Ram in the year 1989 was in the ownership of legal heirs of Basanta Ram. The suit of the plaintiffs was decreed as they were legal heirs of Basanta Ram and the defendant was held to be permissive licensee on the suit property.

Counsel for the appellants has placed on record order dated 8.4.2015 whereby during the proceedings of execution, counsel for the respondent had informed the Court that possession of property has been delivered to the decree holders during the process of law and the execution petition has been fully satisfied. In view of this statement, the execution petition was dismissed as withdrawn being fully satisfied.

In view of the order dated 8.4.2015, since the execution has been carried out, the present RSA is dismissed.

27.5.2015
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(RITU BAHRI)
JUDGE