

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.316 of 2013(O&M)
Date of Decision: May 06, 2015

Meenakshi Bakshi

...Appellant

Versus

Smt.Ramesh Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Jhanji, Advocate
for the appellant.

Mr.Manjit Singh, Advocate
for the respondents.

INDERJIT SINGH, J.

Appellant-plaintiff Meenakshi Bakshi has filed this regular second appeal against Smt. Ramesh Sharma, Miyan Singh Nain and Randhir Singh Nain respondents-defendants challenging the judgment and decree dated 31.07.2012 passed by learned Civil Judge (Junior Division), Panchkula vide which the suit for declaration and permanent injunction filed by appellant-plaintiff was dismissed and also judgment and decree dated 17.12.2012 passed by learned District Judge, Panchkula, vide which appeal filed by appellant was dismissed.

The brief facts of the case are that Meenakshi Bakshi plaintiff-appellant filed suit against Smt.Ramesh Sharma, Miyan Singh and Randhir Singh defendants-respondents for declaration to the

effect that plaintiff is absolute owner and in possession of house No.217 Sector-17, Panchkula measuring 10 marlas with consequential relief of permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff and further restraining the defendants from dispossessing the plaintiff from the house in question.

Originally the plaint was filed by Kuldeep Kumar Bakshi, who died during the proceedings and his wife Meenakshi Bakshi was impleaded as his L.R.

It is mainly stated in the plaint that Kuldeep Bakshi is real brother of defendant Smt.Ramesh Sharma and is permanent resident of the house in dispute. In the year 1980, he had purchased above-said plot out of his own funds. During that time, husband of defendant No.1 used to torture her and demanded a plot in his name. Therefore, to save the married life of his sister, Kuldeep Bakshi got the sale deed registered in the name of defendant No.1. It is also stated that defendant got General Power of Attorney executed in the year 1979 in favour of Kuldeep Bakshi in respect of the plot in question. It is further stated that plaintiff had spent huge sum on construction of house on above said plot.

On the other hand, the case of defendant No.1 Smt.Ramesh Sharma in the written statement is that she is owner of the house in question as she had purchased it out of her own funds. As she is NRI, she had executed Power of Attorney in favour of plaintiff on 24.10.1980 but she cancelled the same on 14.11.2005

when relations among them became bitter. It is further stated that she had also signed a rent deed with plaintiff for ₹5000/- per month and on 31.07.2006, the period of above-stated rent deed expired and plaintiff has now become trespasser to the house in question.

Defendants No.2 and 3 also filed separate written statement and stated that defendant No.1 executed GPA in favour of defendants No.2 and 3 and later on, the said property was sold to them on 06.02.2007 and the permission for transfer was granted by HUDA and they also stated that the plaintiff is residing in the house as tenant.

Both the parties led evidence and learned Civil Judge (Junior Division), Panchkula, after appreciating the evidence, dismissed the suit of the plaintiff. An appeal was filed by the appellant-plaintiff and the same was also dismissed vide judgment and decree dated 17.12.2012 passed by learned District Judge, Panchkula.

Aggrieved from the above-said judgments and decrees, present appeal has been filed by the appellant.

Notice of motion was issued and learned counsel for the respondents appeared and contested the appeal.

At the time of arguments, learned counsel for the appellant argued as per the version given in the plaint. He argued that no rent note has been proved by defendant No.1 Smt.Ramesh Sharma. He next argued that defendant No.1 has also not come to the witness box. The General Power of Attorney dated 24.10.1980 executed in favour of plaintiff supports and corroborates the version of the plaintiff

that the house in question is actually owned by the plaintiff.

On the other hand, learned counsel for the respondents argued as per the defendants' case.

After hearing learned counsel for the parties and after going through the record, I find that it is admitted fact that plot/house in question was purchased in the name of defendant No.1 Smt.Ramesh Sharma. There is no dispute regarding this fact. The case of the plaintiff is that the house/plot was purchased from his own funds whereas defendant's No.1 case is that she is NRI and the house was purchased by her and GPA was also executed in favour of Kuldeep Bakshi, who was her real brother, to look after the property as she is NRI. When the sale deed is in favour of defendant No.1, therefore, defendant No.1 is owner of the property in dispute. Even if it is taken that it is Benami transaction, it is hit by provisions of The Benami Transactions (Prohibition) Act, 1988.

As regarding the fact that the defendant No.1 has not appeared in the witness box, this is of no consequence as she has already sold the property to defendants No.2 and 3 and sale deed executed by her cannot be challenged by the plaintiff as defendant No.1 was the owner of the property in dispute. Even if the rent note is not proved, it does not affect the case of the defendants as the plaintiff is denying that he is not tenant in the property.

The findings given by learned Civil Judge (Junior Division), Panchkula as well as by First Appellate Court, are on the basis of evidence and as per law. The evidence on record has been

appreciated in right perspective. In no way, it can be held that the Courts below have misread the evidence. The findings given by the Courts below are concurrent, as per law and do not require any interference from this Court. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 06, 2015
Vgulati

(INDERJIT SINGH)
JUDGE