

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4723 of 2013 (O&M)
Date of decision 20.08. 2015.

Meenu Gupta

..... Appellant.

versus

Shivam Siksha Samitee and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

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?

Present : Mr. U.K.Agnihotri, Advocate for the appellant.

K.C.PURI, J.

Meenu Gupta plaintiff-appellant has directed the present appeal against the judgment and decree dated 14.08.2013 passed by Shri R.C. Dimri, learned Additional District Judge, Ambala vide which the appeal preferred by plaintiff/appellant against the judgment and decree dated 31.10.2011 passed by Shri Vivek Yadav, learned Additional Civil Judge (Junior Division), Ambala was dismissed.

2. Brief facts of the present case are that one Rajinder Kumar was absolute owner in possession of the suit property, who sold the suit property vide registered sale deed dated 27.12.2005 for valuable consideration to the plaintiff and handed over the actual physical possession to him and the crops of jiri (rice) sown by the plaintiff is standing therein. Mutation thereof

has been entered and sanctioned in the name of the plaintiff. Plaintiff is therefore in continuous possession of the property in dispute as the owner of the same and it is for his utter surprise that the defendants have started claiming to be the pattedar of the suit property under that Rajinder Kumar. Plaintiff came to know about this allegation when he received a notice from the Court of Tehsildar Saha, where the defendants stated to have filed an application for sanction of the mutation in their names on the basis of so called pattanama, which matter is also being contested by the plaintiff. Since the defendants have failed to admit the claim of the plaintiff, hence this suit.

3. Upon notice defendants appeared and filed written statement and took up preliminary objection regarding maintainability concealment of true and material facts, cause of action, verification of plaint and locus standi. It is further alleged that Shivam Shiksha Samiti had taken the suit land on lease for twenty years starting from 10.06-2000 to 15.03.2024 @ Rs.15,000/- per year and Rajinder Kumar, the alleged vendor was President of Shivam Shiksha Samiti. The possession of the land was taken by defendant No.1 and since 16.03.2004, the defendant No.1 is in continuous and uninterrupted possession of the suit property. Rajinder Kumar, the vendor of the plaintiff has no right, title or interest to interfere in the possession of defendant No.1. The plaintiff and her family members were aware that defendant No.1 is in legal and peaceful possession of the land being lease holder, however, they being influential persons got the sale deed executed in their favour just to grab the property of defendant No.1 in

connivance with one Rajinder Kumar vendor. As the mutation of the land was to be got executed by Rajinder Kumar, President of Samiti but with ulterior motive, he did not do the needful and, therefore, mutation could not be sanctioned in favour of defendant No.1 and the revenue entries remain in the name of Rajinder Kumar, which are palpably wrong, incorrect and baseless. Defendant No.1 has started proceedings for the attestation and sanction of mutation of the suit land in favour of defendant No.1 on the basis of lease deed dated 16.03.2004 registered in the office of Sub Registrar, Saha on the same date. Rajinder Kumar vendor was not in possession of the property so he cannot transfer any possession to the plaintiff. On merits, the defendants denied all the averments and prayed for dismissal of the suit with special costs.

4. Replication was filed. From the pleadings of the parties following issues were framed :-

1. Whether the plaintiff is in established peaceful possession over the suit property as detailed in the head note of the plaint, situated in village Saha, tehsil and District Ambala and as detailed in the head note of the plaint ? OPP
2. In case issue No.1 is decided in favour of the plaintiff, then whether the plaintiff is also entitled to permanent injunction as prayed for ?OPP
3. Whether the suit filed by the plaintiff is not maintainable ? OPD
4. Whether the plaintiff has not approached the court with clean hands ? OPD
5. Relief.

5. The parties have led their respective evidence on the aforesaid issues. After appraisal of the evidence, the trial Court dismissed the suit of

the plaintiff vide judgment and decree dated 31.10.2011.

6. Feeling aggrieved, plaintiff preferred First Appeal before learned Additional District Judge, Ambala. The learned Additional District Judge, Ambala vide judgment and decree dated 14.08.2013 dismissed the appeal.

7. Still feeling dissatisfied with the aforesaid judgments and decrees the present regular second appeal has been directed by the plaintiff.

8. The appellant, in paragraph No.17 of the grounds of appeal, mentioned that following substantial questions of law have arisen in the present appeal :-

- (i) Whether the impugned judgments and decrees passed by the Ld. Courts below are illegal, erroneous, perverse, against the evidence on record and against the provisions of law and are liable to be set aside ?
- (ii) Whether a true owner can be denied relief of injunction against forcible interference in possession at the hands of a person who is neither in possession nor has any right, title or interest in the suit land of the true owner ?
- (iii) Whether the relief of injunction can be denied to the true owner in the absence of producing on record copy of sale deed especially in the circumstance when the title of the plaintiff is not disputed and the plaintiff has proved her ownership and possession over the suit land adducing oral as well as documentary evidence ?
- (iv) Whether a lessee can be held in possession when the lease deed is never acted upon and the possession has never delivered to the lessee and the said lease deed already deemed to be cancelled ?
- v. Whether the impugned judgments and decrees have caused manifest injustice and irreparable loss to the appellant-plaintiff
- vi) Whether the relief of injunction can be denied to a true owner flimsily and without ascertaining the actual

position of possession on the suit land ?

9. This is a mere suit for permanent injunction. Plaintiff can succeed if she is able to prove her possession. There is concurrent finding recorded by both the Courts below that plaintiff has failed to prove her exclusive possession over the suit property. That being a finding of fact cannot be interfered in the regular second appeal more so when there is nothing on the record to prove that said findings are the result of misreading and misinterpreting the evidence on the record and are illegal, erroneous and perverse or against the evidence.

10. It is further submitted that lessee cannot be held to be in possession. Possession of the suit property was never delivered to the lessee. Plaintiff may be co-owner after purchase but she succeeds only if she is able to prove possession of her vendor and thereafter her possession over the suit property. Plaintiff has failed to prove her possession over the suit property. So, I have no hesitation in holding that no substantial questions of law has arisen in the present appeal. Consequently, the appeal is without any merit and the same stands dismissed.

11. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 20, 2015
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