

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1491 of 2015 (O&M)
Date of decision 18.05. 2015.

Santosh Rani

..... Appellant.

versus

Antu Ram

..... Respondent.

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. J.S.Saneta, Advocate for the appellant.

K.C.PURI, J.

Santosh Rani plaintiff-appellant has directed the present appeal against the judgment and decree dated 14.10.2014 passed by Shri R.K.Jain, Additional District Judge, Karnal vide which the appeal preferred by plaintiff/appellant against the judgment and decree dated 09.06.2011 passed by Shri Puneet Sehgal, the then learned Civil Judge (Junior Division), Karnal was dismissed.

2. It is averred that Smt. Omlesh widow of Shri Ravinder Nath was the owner of land Khasra No. 11765/5448/2 situated within the limit of M.C., Karnal and the plaintiff constructed a residential house No.

312/2 in the part of said khasra number in the colony known as Gautam

Pura Gamri, Char Chaman, Karnal before 1970. Later on, plaintiff including the other occupants got sale deed executed and registered on 28.08.1996 in his favour to the extent of 3/52 share out of 0B-6B comprised in khasra No.11765/5448/2. It is further averred that defendant is husband of the real sister-in-law (Nanad) of the plaintiff, so the defendant is close relative of the plaintiff and was not having any residential accommodation. He requested the plaintiff to give the house in dispute to him till suitable arrangement is made and she accepted the request of the defendant and handed over the possession of the house to him as licensee and therefore, the defendant was residing in the house in dispute. Thereafter, plaintiff terminated the license on 10.12.2001 and requested him to hand over the possession but of no use, hence the suit.

3. Upon notice, defendant filed written statement contesting the claim of the plaintiff on various grounds wherein he has raised several preliminary objections to the effect that suit of the plaintiff is not maintainable as her husband has already filed a suit, qua same property, which was decided in favour of the defendant, as the question of title/ownership has been decided by the Court in favour of the defendant and claim of possession of the suit property by the plaintiff, does not arise ; not coming to the court with clean hands ; no fresh cause of action arises, estopped by her own act and conduct as in the earlier filed suit, her husband claimed monthly rent @ Rs.500/- whereas in the present suit plaintiff alleges the defendant as a licensee residing in the same house. It was further pleaded that the pleas taken by the plaintiff in the earlier suit

are totally contradictory and therefore the plaintiff has no stand and is estopped from taking a new stand, bad for ad-valorem court fee and no locus standi to file the present suit. On merits, it is alleged that after purchasing the land construction of the house was raised by husband of the plaintiff which is contradictory to the present stand. Rest of the averments were denied and finally a prayer to dismiss the suit has been made.

6. In the replication filed by the plaintiff, the averments of the plaint were reiterated and those of the written statement were controverted.

7. From the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to a decree for possession as prayed for ? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi to file the present suit ? OPD .
4. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from this Court ? OPD
5. Whether plaintiff has no cause of action to file the present suit ? OPD
6. Whether plaintiff is estopped by his own act and conduct from filing the present suit ?OPD
7. Relief.

8. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 09.06.2011 dismissed the suit of the plaintiff.

10. Feeling dissatisfied with the aforesaid judgment and decree dated 09.06.2011, the plaintiff-appellant filed the First Appeal, which was dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 14.10.2014.

11. Still feeling dissatisfied with the judgment and decree dated 09.06.2011 and judgment and decree dated 14.10.2014, the present regular second appeal has been directed.

12. The plaintiff-appellant in paragraph No.8 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

i) Whether a suit for possession is maintainable being a co-sharer in the property against a tress passer ?

ii) Whether the Courts below has mis-read the evidence led by the appellants/plaintiffs?

13. I have heard learned counsel for the plaintiff/appellant and have gone through the case file.

14. There is nothing on the record that judgments of both the Courts below are the result of misreading or misinterpreting the evidence on the file. Husband of the plaintiff earlier filed suit regarding the property in question claiming to be in possession as tenant on monthly rent of Rs.500/- and ultimately her husband failed and thereafter the present plaintiff has filed suit taking contradictory stand which stand was not accepted by both the Courts below. The second appeal lies only if any substantial question of law has arisen. Only the factual position is involved in the present case and no substantial question of law has arisen. Consequently, the appeal is

without any merit and the same stands dismissed.

(K.C.PURI)
JUDGE

May 18 , 2015
sv/SN