

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

R.S.A No. 1634 of 2015 (O&M)

Date of decision:- 18.05.2015

Sadhna

...Appellant

Versus

Sant Ram

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Deepak Sharma, Advocate
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

C.M. No. 4557-C of 2015

For the reasons mentioned in the application, delay of 5 days in re-filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A No. 1634 of 2015

The present regular second appeal is directed against the judgment and decree dated 08.12.2014 passed by Addl. District Judge, Panchkula whereby the judgment and decree dated 11.07.2014 passed by the Civil Judge (Jr Divn.) Panchkula was upheld whereby the suit of the plaintiff/appellant (herein after to be referred as 'the appellant')

for possession by way of ejectment, of the respondent from the property measuring 5 marlas out of the land comprised in Khata No. 763, Khasra No. 53//15/1/3(4-8) situated at village Raipur Rani. H.B. No. 6, Tehsil Kalka, District Panchkula and also for recovery of mesne profits at the rate of Rs.1000, was dismissed.

Brief facts of the case put forth by the appellant is that she along with her deceased mother is the absolute owners of the suit land, as earlier, late Banarsi Dass (appellant's father) was owner of the suit land and after his death, appellant stepped in to his shoe and became joint owners of the suit land. The mutation of inheritance No. 6018 had been sanctioned in favour of the appellant. In the month of May, 2011, the respondent illegally and forcibly encroached upon the suit land, by taking undue benefit of their being ladies. They requested the respondent to vacate the suit land, but refused to do so. On 20.07.2011, the respondent tried to raise construction but due to timely intervention of the respectable, he could not succeed in his evil designs.

On notice, the respondent filed his written statement denied the ownership and possession of the appellant over the suit land, rather pleaded that late Banarsi Dass, father of the appellant, during his lifetime, had entered into an agreement dated 21.09.1994

Ex D1 to sell the suit land to him and had received the whole of the sale consideration amount. He put him in possession of the suit property and the respondent is entitled of his legal protection as envisaged under Section 53-A of the Transfer of Property Act.

P.W.1 while appearing in the witness box during her cross examination admitted the signatures contained on agreement to sell attached with paper book as Ex P1 is of her father. She further admitted the existence of the house in the suit land and admitted that the respondent is residing in that house. She and her mother never resided in the suit property rather they resided in a house situated in village Raipur Rani, which is at little distance from the suit property. She admitted the respondent did the work of pottery in the suit land. She admitted the electricity connection qua the house in the suit land is in the name of the respondent. She also admitted in the year 2011, after the illegal occupation of the suit land by the respondent, she had not filed any complaint before police or any another authority except filing the suit before the trial Court. P.W.2 also admitted the possession of the respondent over the suit land.

Panch Ram, one of the attesting witness to agreement to sell dated 21.06.1994 Ex D1 has been examined as D.W.1 and he admitted his signatures at point X although he has not been able to

depose verbatim about the contents of agreement to sell dated 21.06.1994 because it was 20 years old document. Further, there was an endorsement on the back of the agreement whereby late Banarsi Dass on 30.11.1995 had admitted the receipt of entire sale consideration and left the execution and registration of sale deed on the basis of agreement to sell on the will/choice of the respondent. Once, the sale consideration was accepted, the time would not be the essence to specifically perform the agreement to sell dated 21.06.1994. The execution of agreement to sell was duly proved and the trial Court dismissed the suit of the appellant, however, the counter claim filed by the respondent was allowed and a decree for symbolic possession by way of specific performance of agreement to sell dated 21.06.1994.

On appeal, the lower Appellate Court affirmed the findings of the trial Court and dismissed the appeal filed by the appellant, However, a direction was given to the appellant to execute and register sale deed in favour of the respondent, within a period of one month from today to specifically perform the agreement to sell dated 21.06.1994 qua the suit land, failure to which the suit deed may be executed with the assistance of the learned trial court on filing of the execution petition by the respondent.

Once the appellant had admitted the possession of the respondent over the suit land as the house was constructed there by the respondent and the electricity connection qua the house was also in the name of the respondent and further the agreement to sell was further proved by D.W.1 attesting witness of the agreement to sell, the judgment passed by both the Courts below, calls for no interference by this Court. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

May 18, 2015

G Arora

(***RITU BAHRI***)
JUDGE