

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

**RSA NO. 2733 OF 2015 (O&M)
DECIDED ON : 04.09.2015**

Laxmi

...Appellant

versus

Jagbir Singh and others

...Respondents

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

Present : Mr. Saurabh Dalal, Advocate.

K. C. PURI, J.

CM NO. 6847-C OF 2015

There is delay of 962 days in re-filing the appeal. The same stands condoned for the reasons mentioned in the application.

MAIN CASE

Challenge in this appeal is to the judgment and decree dated 08.05.2012 passed by Shri A. K. Jain, Additional District Judge, Jhajjar, vide which the appeal preferred by plaintiff/appellant against the judgment and decree dated 20.10.2010 passed by Shri Devender Singh, the then Additional Civil Judge (Senior Division), Jhajjar, was dismissed.

Briefly stated, plaintiff filed a suit for possession and permanent injunction against the defendants alleging therein that she is owner in possession of the residential house situated within the

abadi deh of village Madana Tehsil Beri, District Jhajjar. It is further submitted that Kanhiya s/o Fatan was earlier owner in possession of the house in dispute and after his death, the plaintiff became the owner and possession of the said house. The defendants have illegally occupied the house in dispute and closed the main door by putting bricks at point 'P' and opened the door at point 'x'. It is further submitted that defendants are in illegal and unauthorised possession of the house in dispute. The plaintiff requested the defendants many a times to hand over the possession of the house in dispute but in vain. Hence, the suit was filed.

Upon put to notice, the defendants appeared and filed joint written statement taking preliminary objections regarding maintainability; suit not good for want of proper court fee; suit is time barred; the plaintiff has no locus standi to file the suit; the plaintiff is estopped from her own act and conduct. On merits, it was submitted that the plaintiff never remained in possession of the house in dispute nor she has any concern with the same. It was further denied that after the death of Kanhiya, plaintiff became the owner of house in dispute. The other averments were denied.

Replication was not filed. On the basis of pleadings of parties, issues were framed by the trial court vide order dated 11.06.2004.

In order to prove her case, plaintiff examined three witnesses in all. On the other hand, defendants examined one witness in all.

The learned trial court, after appraisal of the evidence, dismissed the suit vide judgment and decree dated 20.10.2010 passed by Additional Civil Judge (Senior Division), Jhajjar.

Feeling dissatisfied with the above said judgment and decree dated 20.10.2010, the plaintiff/appellant preferred first appeal. The said appeal was also dismissed vide judgment and decree dated 08.05.2012 passed by Additional District Judge, Jhajjar.

Still feeling aggrieved with both the judgments and decrees dated 20.10.2010 and 08.05.2012, the plaintiff/appellant has preferred the instant regular second appeal.

Learned counsel for the appellant, in para no. 9 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether grave and manifest injustice has been caused to the appellant ?
- 2) Whether the findings of the learned courts below are perverse being contrary to the evidence on record ?

Learned counsel for the appellant has submitted that the findings recorded by both the courts are perverse and are the result of misreading and misinterpreting the evidence.

I have heard learned counsel for the appellant and have gone through the records carefully.

There is concurrent finding of fact recorded by both the courts below that the plaintiff has failed to prove her possession over the house in dispute. That finding of fact cannot be interfered in the regular second appeal. More so, when there is nothing on file to show that the above said findings are the result of misreading and misinterpreting the evidence available on file. So, I have no hesitation in holding that no substantial question of law has arisen in the instant appeal. Consequently, the appeal is without any merit and the same stands dismissed.

SEPTEMBER 04, 2015
shalini

(K. C. PURI)
JUDGE