

In the High Court of Punjab and Haryana at Chandigarh

RSA No.3038 of 2015 (O&M)

Date of decision: September 29, 2015

Mamta Jhamb

..... Appellant

Versus

Rajat Goyal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Ashwani Talwar, Advocate for the appellant.

KULDIP SINGH, J. (Oral)

Challenged in the present Regular Second Appeal is the judgment and decree dated 09.02.2015 passed by the learned Additional District Judge, Sonapat affirming the judgment and decree dated 01.05.2013 passed by the Civil Judge (Jr. Divn.), Sonapat vide which the suit filed by the plaintiff-respondent for declaration and mandatory injunction was decreed to the effect that the plaintiff was declared owner of plot No.22 situated in rect. & killa No.24//4/2. Defendant No.1-Society and defendant No.3 were ordered to remove encroachment from the suit property within two months from the date of order.

The short controversy as coming out of pleadings of parties is that originally defendant No.1-Cooperative House Building Society allotted plot No.22 measuring 350 sq. yards (80'x39'4-1/2") to one of its members Radhey Shyam Aggarwal vide sale deed dated 25.10.1993. The plot was allotted on

account of open draw which was held on 07.02.1993. The plaintiff purchased the said plot vide sale deed dated 26.11.2007 from said Radhey Shyam Aggarwal, who happens to be her uncle and who was a regular member of defendant No.1-Society. The dispute is that defendant No.3 Mamta Jhamb claimed that she was allotted said plot No.22 and a sale deed dated 04.08.2000 was executed in her favour by the Society. The plaintiff claimed that this is encroachment over the plot and seeks declaration and mandatory injunction.

Both the Courts below determined the controversy in favour of the plaintiff.

I have heard learned counsel for the appellant and examined the Lower Court file.

It comes out that in the sale deed executed in favour of Radhey Shyam Aggarwal on 25.10.1993, same boundaries and dimensions mentioned but killa number mentioned as 24/4/2 whereas the sale deed of Mamta Jhamb defendant No.3-appellant killa number is mentioned as 24/7. However, same plot number and same dimensions and boundaries are mentioned. Admittedly, sale deed in favour of Radhey Shyam Aggarwal is prior in date.

A perusal of the written statement of the Society shows that it was the stand of the Society that this plot was originally allotted to Radhey Shyam but he did not made certain payments, therefore, the plot was resumed and sold to defendant No.3. However, no record in this regard was produced that Radhey

Shyam was defaulter and resultantly Society resumed the plot and, therefore, it was again sold to Mamta Jhamb. In fact, it comes out from the dimensions and boundaries that the same plot has been sold twice by the Society to Radhey Shyam Aggarwal and then to Mamta Jhamb. In the sale deed in favour of Radhey Shyam, it is recorded that entire sale consideration has been received and, therefore, it is not understood how Radhey Shyam was defaulter. Even if Society wanted to resume the plot, it is required to initiate proceedings and pass the resumption order. However, the Society did not lead any evidence before the Lower Court. The result would be that prior sale deed of Radhey Shyam Aggarwal has to be upheld and consequently subsequent purchase by the plaintiff from said Radhey Shyam Aggarwal has to be upheld. In this regard, there is no error in the findings of fact recorded by both the Courts below. It appears that the Society has sold the plot twice. Therefore, defendant No.3 is also at liberty to initiate Civil as well as Criminal proceedings against the Society seeking appropriate relief.

No merit in the present appeal on the facts and no substantial question of law arises. Hence, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

September 29, 2015

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