

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 2091 of 2014 (O&M)

Date of decision : March 31, 2015

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Shri Ram

.....Appellant

Versus

Kamla Devi

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vishal Nehra, Advocate for the appellant.

Mr. Harish Bhardwaj, Advocate for the respondent

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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?*

RITU BAHRI, J

This regular second appeal has been filed against the judgment and decree dated 20.4.2011 passed by the Additional Civil Judge (Senior Division), Gohana whereby the suit of the plaintiff has been decreed and the judgment dated 7.2.2014 passed by the Additional District Judge, Sonapat, whereby the appeal against the judgment and decree of the trial Court was dismissed and the findings of the trial Court were affirmed.

The plaintiff-respondent (hereinafter referred to as 'the plaintiff') have filed a suit for possession based on a judgment and decree dated 30.3.2000, whereby the house in question was decreed

in favour of the plaintiff. The defendant-appellant (hereinafter referred to as 'the defendant') by filing a written statement took the stand that as per the family settlement arrived at between the parties, the house in question had come in the share of the defendant and another house in the name of Jai Narain, husband of the plaintiff. Since the time of the said family settlement, defendant was residing in the suit property peacefully. The parties led their respective evidence.

Trial Court decreed the suit of the plaintiff as per the judgment and decree dated 30.3.2000 Ex. PW/D and Ex. PW/F respectively. Suit property had been transferred in the name of the plaintiff by her husband. Annexure A-1 shows that Jai Narain had appeared and stated that the suit property was in his name and as per the family settlement arrived at between the parties in the year 1998, possession of the suit property was delivered to the plaintiff. The consent decree was necessary to correct the entries in the revenue record under Section 45 of the Punjab Land Revenue Act. With the consent decree the entries could be changed in the name of the plaintiff, Kamla Devi. This decree was never challenged by the defendant. Moreover to substantiate the allegation of fraud he did not examine Jai Narain his brother as the witness nor the other brother Rajinder who was also party to the family settlement. As per the deposition of the defendant himself as DW-2, he admitted that he and his brother Rajender have one house each and as per the site plan Ex. PW1/E, the houses of Rajender and Shri Ram were

adjacent to suit property. The defendant failed to specify the property which had been purchased in the name of Jai Narain, husband of the plaintiff at the time of alleged family settlement. In the absence of the evidence, the consent decree was accepted by the trial Court and the suit was decreed. The Appellate Court on appeal has affirmed the findings of facts recorded by the trial Court and also held that no fraud had been committed in obtaining the judgment and decree dated 30.3.2000 Ex. PW/D and Ex. PW/F respectively since the defendant did not challenge the judgment and decree dated 30.3.2000 and no allegation of fraud was made out against the plaintiff. Another fact which the Appellate Court has taken into consideration is that when the plaintiff had filed a suit for permanent injunction, the Local Commissioner was appointed and before he reached the spot, defendants had given beatings to the plaintiff and dispossessed her and locked the suit property. That is why the suit for permanent injunction was converted into the suit for possession regarding the suit property after amendment. Report of the Local Commissioner dated 17.3.2007 (Ex. D-X) also confirms this fact. In the cross-examination of the plaintiff, she has stated with regard to the quarrel which took place at the time of appointment of Local Commissioner. She had informed the police and had got herself medically treated in Civil Hospital. A perusal of the judgments passed by both the Court reveals that the defendant-appellant did not lead any evidence by examining his brother Jai Narain or other brother Rajender to show that pursuant to the family settlement by

his father Dharam Chand, the property in dispute had been given to the defendant. Pursuant to the family settlement and judgment and consent decree, the suit of the plaintiff has been rightly decreed for possession against defendant.

In view of the above, no illegality or infirmity has been found in the judgments passed by the Courts below. Therefore, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

March 31, 2015
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(**RITU BAHRI**)
JUDGE