

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

**RSA No.253 of 2014(O&M)
Date of Decision : 1.7.2015**

Smt. Kaushalya

.....Appellant

Versus

Bina Devi and ors.

.....Respondents

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. R.A. Sheoran, Advocate
for the appellant.

GURMIT RAM, J.

This appeal is of appellant-plaintiff Kaushalya against the judgment and decree dated 23.8.2011 passed by the Court of learned Civil Judge(Junior Division), Bhiwani vide which her suit was dismissed with costs and judgment and decree dated 1.11.2013 passed by the Court of learned District Judge, Bhiwani vide which the appeal preferred against the above-said judgment and decree of learned Civil Judge (Junior Division), Bhiwani was also dismissed.

2. The case of the appellant who was plaintiff before the learned trial Court in nutshell was that she being the daughter of Ram Partap is in possession of the suit property as its owner. The said Ram Partap was married with one Kanta and out of their wedlock, the appellant-plaintiff and one Navin Kumar were born. Her father made an attempt to murder his wife Kanta for which he was prosecuted under Section 307 of IPC and convicted ultimately. He remained in jail in this regard from 1990 to 1993. At that time, she was about 20 years old and unmarried and used to reside in the house in dispute along with her above said brother Navin Kumar who died in the year 1995. Her father filed

a suit bearing No.387 of 1994 against her for restraining her from interfering into the peaceful possession, which was dismissed since he was not found to be in possession of the said house. Rather it was found that she (appellant) was in actual physical possession of the said house and Ram Partap, father of the plaintiff never resided in this house after 1990 since he used to reside in ancestral house situated in Bichla Bazar, Gali Murari Lal, Bhiwani. After the death of Navin Kumar in the year 1995, he shifted to Delhi. Then it was her further claim that she had perfected her title qua this house by way of adverse possession being in its possession for a period of more than 12 years continuously without any interruption. Her father sold this house to respondent No.1 herein (defendant No.1) vide sale deed dated 2.8.2007 illegally since he had no right, title or interest in this house at that time. The recitals inserted in the sale deed were stated to be wrong, against the facts and law and hence not binding on her rights qua this house. Hence, the instant suit.

3. On notice, defendants in their written statement took certain preliminary objections including the maintainability of the suit. It was further their stand that defendants No.1 and 2 had already filed a suit for declaration on the basis of sale deed dated 2.8.2007 which was pending in the Court for 26.11.2007 and as such this suit was not maintainable. Then it was their further plea that judgment and decree dated 23.1.1999 has no applicability to the facts of the case in hand because at that time plaintiff was unmarried and residing in the disputed house as a licensee as daughter of Ram Partap. After this decision, she was married with one Sanjay of village Nalwa. A divorce took place between both of them on 16.3.2002. Then her second marriage was arranged with one Ashok son of Rameshwar, resident of Hisar. At present, she is employed as a teacher in Government High School, Badwa and her husband is doing some private job at Hisar. Presently defendant No.1, who is wife of

defendant No.2 is in physical possession of the house in dispute. Possession of the plaintiff/appellant of the disputed house was denied.

4. The learned trial Court after hearing the counsel for both the parties and perusing the record as well dismissed the suit of the plaintiff vide the impugned judgment and decree dated 23.8.2011. The appeal preferred by the plaintiff against the above-said judgment and decree was also dismissed by the learned District Judge, Bhiwani vide the impugned judgment and decree dated 1.11.2013.

5. Being not satisfied with the findings recorded by both the Courts below, the appellant-plaintiff has approached this Court by filing the instant regular second appeal.

6. Learned counsel for the appellant was heard and record as available on the file was also perused.

7. Learned counsel for the appellant has contended that in an earlier suit filed by Ram Partap in the year 1994, the present appellant-plaintiff was found to be in possession of the house in dispute and as such the suit filed by her father Ram Partap was dismissed on 23.1.1999. Then it is also his contention that even a trespasser cannot be dispossessed forcibly from any property in his possession except in due course of law. Further he has prayed that this appeal be accepted and judgments and decrees passed by both the Courts below be set aside with a further prayer to decree the suit.

8. So far as the plea of adverse possession is concerned, it is available to the defendant in defence and the same cannot be taken by the plaintiff in order to seek declaration. Herein the learned trial Court has rightly relied upon the principles as laid down by this Court in case **Gurdev Singh Versus Gurbax Singh and anr. 2011 (1), Civil Court Cases 697**. So as such the above plea of the appellant that she has acquired the ownership/title of the

disputed house by way of adverse possession is held to be not tenable.

9. Then in the headnote of the instant suit itself, the present appellant-plaintiff had shown her address as C-259, New Model Town, Hisar which also indicates that she is no more in physical possession of the property in dispute. It is correct that the suit for injunction is maintainable by a trespasser against the entire world except the true owner. In the case in hand, the house in dispute has been sold by the father of the present appellant-plaintiff to defendant No.1(respondent No.1) vide sale deed dated 2.8.2007. So as such respondent No.1 (defendant No.1) had become the absolute owner of this house after its purchase vide said sale deed. Resultantly, the present appellant-plaintiff is not in a position to maintain her instant suit qua respondent No.1 (defendant No.1). As above-said respondent No.2 (defendant No.2) is the husband of respondent No.1 (defendant No.1).

10. So far the finding given in the earlier suit No.387 of 1994 is concerned, the same also does not help the present appellant-plaintiff since she was unmarried at that time. After that her marriage was solemnized firstly with Sanjay, then after her divorce from him, her second marriage was solemnised with one Ashok, resident of Hisar where she is residing presently as per the record.

11. Then during the trial of the case, the respondents-defendants brought on the record a copy of judgment Annexure-X which shows that the present appellant-plaintiff had earlier filed a suit for declaration and permanent injunction against the present respondents-defendants claiming her 1/3rd share in the disputed house on the basis of adverse possession. So on this ground also the instant suit is rightly held to be barred by the principle of *res judicata* as embodied under the provisions of Section 11, CPC, by both the Courts below.

12. In the light of the above discussion, this appeal is held to be meritless. So this appeal stands dismissed and disposed of accordingly. The judgments and decrees of both the Courts below under challenge in the instant appeal are hereby affirmed.

Since the main appeal has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

1.7.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No