

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.722 of 2015 (O&M)
Date of Decision: May 01, 2015

Satya Devi

...Appellant

Versus

Om Parkash alias Pal Turiwala

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Raj Kumar Garg, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Satya Devi has filed this regular second appeal against Om Parkash alias Pal Turiwala respondent-defendant challenging the judgment and decree dated 27.01.2011 passed by learned Civil Judge (Junior Division), Chandigarh vide which the suit for permanent injunction filed by appellant-plaintiff was dismissed and also judgment and decree dated 24.09.2014 passed by learned Addl. District Judge, Chandigarh, vide which appeal filed by appellant was dismissed.

The brief facts of the case are that Satya Devi plaintiff filed suit against Om Parkash alias Pal Turiwala defendant for permanent injunction restraining the defendant from interfering in the peaceful possession and ownership rights of the plaintiffs over the premises/property one storey building, described as two vacant rooms

on the ground floor and two rooms at the first floor and further restraining the defendant from demolishing or making any alteration or addition or impairing the utility of the premises by using unlawful force and for further restraining the defendant from selling, alienating, transferring or making offer to sell the same.

It is stated in the plaint that plaintiff is owner of land bearing No.347, Hallomajra comprising her residential house, one shop rented out to Shamsher Singh, one room accommodation rented out to Tarkesar, one room accommodation rented out to Sham Lal and one storey building in which upper portion of first floor are rented out to R.K.Gupta and ground floor is with the plaintiff, by virtue of registered Will dated 19.05.1971 executed by Sh.Bhagat Ram. It is further stated that the defendant being near relative of the plaintiff tried to disturb the peaceful possession of the plaintiff over the said property. Earlier also, the defendant illegally sold 1/4th share of the plaintiff in the property i.e Bagh (two bigha), kiryana shop, residential building and agricultural land, which the plaintiff inherited from her father Salekhu Ram.

On the other hand, the case of the defendant in the written statement is that defendant is owner of the property in question which was gifted by Salekhu vide registered gift deed dated 26.07.1982 duly registered in the office of Sub Registrar, U.T. Chandigarh. The plaintiff has no right, title or interest in the suit property measuring 32'x25 ft. situated in village Hallomajra. It is further stated that the suit property has not been properly described by the plaintiff in the plaint and no

site plan of the property has been filed with the suit. It is also stated that Bhagat Ram was never the owner of the property in question. Tarkeshwar, Sham Lal and R.K.Gupta are the tenants under the defendant. The water connection in the building is also in the name of the defendant, however, the electricity connection is still in the name of Salekhu.

Learned Civil Judge (Junior Division) Chandigarh, vide judgment and decree dated 27.01.2011, after appreciating the evidence, held that plaintiff has failed to prove her possession in respect of any property and further, the description of the property given by the plaintiff is not complete and the property has been described as one storey, which is one portion of the total property. The plaintiff has not examined any tenant to prove her possession. Against dismissal of suit, an appeal was filed by the appellant-plaintiff and the same was also dismissed vide judgment and decree dated 24.09.2014 passed by learned Addl. District Judge, Chandigarh.

Aggrieved from the above-said judgments and decrees, present appeal has been filed by the appellant.

At the time of arguments, learned counsel for the appellant argued that findings of fact given by the Courts below are incorrect and not as per law and evidence. He further argued that property has been duly described and plaintiff is owner in possession of the suit property and defendant has no right, title or interest on the suit property.

I have heard learned counsel for the appellant and have

gone through the record.

First of all, I find that the findings of fact given by the Courts below are correct and as per evidence. Secondly, both the Courts below have appreciated the evidence in right perspective and in no way, it can be held that findings are given against the evidence. Both the Courts correctly discussed the evidence on record produced by the parties.

Learned counsel for the appellant has also argued that the defendant has failed to prove his version. It is settled law that the plaintiff is to stand on his/her own legs and cannot take the benefit of defects in the defendant's case. The plaintiff has come to the Court by alleging herself as owner in possession. The plaintiff-appellant is to prove her possession by leading cogent evidence. The first floor is stated to be in possession of R.K.Gupta but he has not been examined. No other tenant has been examined to show that plaintiff has inducted them as tenant in the suit property. No rent note/receipts have been produced by the plaintiff to show that she has inducted the tenants or she is the landlord of the property. Rather, the defendant has brought one tenant into the witness box who has deposed in favour of the defendant. Furthermore, in the suit, the property is stated to be bearing khasra No.347 whereas in the cross-examination, plaintiff has clearly stated the number of the property in dispute as 645. She also admitted in her cross-examination that no electricity bill is being received by her in respect of the suit property by mentioning the property number as 645. She further deposed that the

bills, which she has produced in evidence as Ex.P6 and P7, belong to her residential house. As regarding the jamabandi Ex.P9, which is of no use because in the plaint, the plaintiff has not stated that property in dispute is constructed on the khasra number. It is stated by the plaintiff that she is residing in house No.89. No site plan has been placed on the record by the plaintiff. The Court has also discussed the boundaries given in the gift deed as well as in the Will, as stated by PWs in their testimonies and as mentioned in the plaint. The court after considering the evidence minutely, has reached to the conclusion that plaintiff has failed to prove her possession over the property in dispute. Otherwise also, merely the fact that Will has been executed in favour of the plaintiff, will not prove the ownership of Bhagat Ram. Firstly, the plaintiff is to prove by leading cogent evidence that Bhagat Ram was owner, who executed the Will and then plaintiff can claim ownership on the basis of the Will.

The findings of fact given by the Courts below are concurrent, correct and as per law. The evidence has been appreciated in the right perspective. In no way, it can be held that evidence has been misread by the Courts below or the findings are against the evidence. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the regular second appeal, the same is dismissed.

May 01, 2015
Vgulati

(INDERJIT SINGH)
JUDGE