

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.12684-C of 2014 in/and
RSA No.5363 of 2014 (O&M)
Date of Decision: March 17, 2015**

Sunita

...Appellant

Versus

Dinesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Surjit Singh Salar, Advocate
for the appellant.

INDERJIT SINGH, J.

CM No.12684-C of 2014

For the reasons mentioned in the application, the same is allowed. The delay of 55 days in re-filing the appeal is condoned.

RSA No.5363 of 2014

Appellant-plaintiff Sunita has filed this regular second appeal against Dinesh Kumar, Smt.Manisha, Gurnam and Sawarna respondents challenging the judgment and decree dated 25.9.2013 passed by learned Addl. Civil Judge (Senior Division), Kalka vide which the suit filed by the appellant-plaintiff was dismissed and judgment and decree dated 28.03.2014 passed by learned Addl. District Judge, Panchkula, vide which appeal filed by the appellant-plaintiff was dismissed.

The brief facts of the case are that plaintiff-appellant

Sunita filed a suit for permanent injunction restraining the defendants from interfering illegally and forcibly and from dispossessing the plaintiff from the plot measuring 4 biswas 15 biswansi comprised in Khewat/Khatauni No.126/260 Khasra No.666/275/12-6 qua 95/4920 share i.e. 0-4-15 which is owned and possessed by the plaintiff by virtue of registered sale deed bearing vasika No.4120/1 dated 20.01.2006 and mutation No.4855 sanctioned on 17.03.2006.

It is mainly stated in the plaint that plaintiff is exclusive owner in possession over the land which she has purchased vide registered sale deed. The defendants threatened to interfere in the suit property. Upon notice, defendants No.1 and 2 appeared through their counsel and filed written statement. They stated that the property comprised in khasra No.666/275 is a large khasra number having area measuring 12 bighas 6 biswas. One Surjit Kaur had purchased the land 1 bigha 13 biswas out of the property and mutation No.3636 was also sanctioned in her favour. Said Surjit Kaur executed a sale deed dated 28.04.2006 in regard to the property measuring 4 biswa 14 biswansi in favour of defendant No.2 for a valuable sale consideration of ₹1,75,000/- along with specific boundaries. Defendant No.2 also constructed a room in the suit property purchased by her. When defendant No.2 moved an application to the Electricity Department to get electricity connection, then the plaintiff raised an objection. It is also the case of the defendants No.1 and 2 that they moved an application to the Tehsildar, Kalka on 27.10.2009 for ascertaining the possession of defendant No.2 over the property in

dispute.

In support of its case, plaintiff examined her power of attorney Vinod Kumar as PW-1. She also examined PW-2 Praveen Kumar, PW-3 Shalu, PW-4 Naresh Kumar and PW-5 Somnath.

On the other hand, defendant No.1 Dinesh Kumar examined himself as DW-1, DW-2 Kamaljit and DW-3 Vipin Kumar and also produced documentary evidence.

At the time of arguments, learned counsel for the appellant argued that the sale deed of the plaintiff is prior in time. Therefore, the findings given by both the Courts below amount to misreading of evidence.

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

From the record, first of all I find that there are concurrent findings of fact given by the Courts below and no substantial question of law arises in this regular second appeal. Secondly, in no way, it can be held that the Courts below have misread the evidence and have not appreciated the same in right perspective. Plaintiff-appellant herself did not appear in the witness box in support of her case. Rather, her attorney Vinod Kumar, who is not related to her, has been examined. Nothing has been shown as to why the plaintiff herself did not appear before the Court as a witness. This is a suit for permanent injunction and the Court is not to decide the title. Only possession is to be proved before the lower Court. The lower Court after appreciating the evidence reached to the conclusion that this khasra

number is of big area and the plaintiff failed to produce cogent evidence to prove her possession over the disputed property. There is no documentary evidence on record to prove the possession of the plaintiff over the suit property. The mere fact that sale deed in favour of the plaintiff is prior in time, will not prove the possession itself. Learned counsel for the appellant argued that a water connection is there in the property in dispute but this has also not been proved by the plaintiff by bringing the record.

From the above discussion, I find that findings of fact given by both the Courts below are correct, as per law and do not require any interference from this Court.

As no substantial question of law arises in the present regular second appeal, therefore, the same is dismissed.

March 17, 2015
Vgulati

(INDERJIT SINGH)
JUDGE