

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

**RSA No. 6326 of 2014 (O&M)
Decided on : 14.9.2015**

Swaran Kaur

...Appellant

Versus

Pritam Kaur

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Parminder Singh, Advocate,
for the appellant.

K. C. PURI, J.

The plaintiff appellant has directed this appeal against the judgment and decree dated 28.8.2014 passed by Sh. Jasbir Singh, Additional District Judge, Karnal, vide which the appeal preferred by the plaintiff was dismissed and the judgment and decree dated 21.12.2011 passed by Sh. Rajan Walia, Civil Judge (Senior Division), Karnal were upheld and the suit of the plaintiff remained dismissed.

Brief facts of the case of plaintiff are that the plaintiff is owner in possession of one marla plot situated in the abadi deh of village Lalani, Tehsil Nilokheri, District Karnal as detailed in the plaint. It was further pleaded that plaintiff has purchased the above said plot from Sh. Charan Singh for a consideration of Rs.15,000/- vide

agreement to sell dated 13.7.2009 and defendant has no concern with the suit property, who is trying to interfere in the peaceful possession of the plaintiff. Hence, the present suit for permanent injunction.

Upon notice, the defendant appeared. The defendant filed written statement and took preliminary objections of maintainability, locus standi, plaintiff has not come to the Court with clean hands, suit being bad for mis-joinder and non-joinder of necessary parties and cause of action. On merits, it was pleaded that plaintiff has not come to the Court with clean hands as description of property is wrongly given and Charan Singh was never owner in possession over the suit property rather it is the defendant who is owner in possession over the suit property. The plaintiff wants to grab the suit property on the basis of agreement to sell.

From the pleadings of the parties, issues were framed. Both the parties led their respective evidence. The learned trial court, after appraisal of the evidence, vide judgment and decree dated 21.12.2011 dismissed the suit of the plaintiff.

Feeling dissatisfied with the above said judgment and decree dated 21.12.2011, the plaintiff filed appeal before the lower appellate Court which was dismissed vide judgment and decree dated 28.8.2014 passed by Sh. Jasbir Singh, Additional District Judge, Karnal.

Still feeling aggrieved, with the aforesaid judgments

and decrees dated 21.12.2011 and 28.8.2014, the plaintiff-appellant has

preferred the instant regular second appeal.

Learned counsel for the appellant, in para no.9 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether finding of the 1d. both the Courts below in perversity of the evidence and as well as the documentary evidence in the light of provisions u/S 90 and 91 of the Evidence Act is ever sustainable in the eyes of law ?
- 2) Whether as per recital of the agreement Ex.PW1/B, the dimension and the right of occupation of the plaintiff over the suit property is proved, so as to entitle the decree of permanent injunction?
- 3) Whether the agreement in respect of a property situated in the abadi-deh of the village of delivery of possession, can be discarded on the ground of compulsory registration in the eyes of law?

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

Learned counsel for the appellant has submitted that in suit for permanent injunction, ownership of the suit property is not required to be established. Unregistered document can be used for the collateral purpose i.e. to determine the possession. The suit land is abadi-deh and as such there is no khasra number. So, both the Courts below have committed error by not appreciating the evidence in right perspective.

I have carefully considered the said submissions but

do not find any force in that submission.

The claim of the plaintiff is on the basis of unregistered agreement. The proposed vendor is not proved to be the owner of the property. No doubt, in suit for injunction, only possession is to be seen but the plaintiff has failed to prove her possession over the suit property. The property in question is stated to be plot. In what manner the plaintiff is in possession is not depicted by the plaintiff. The plaintiff herself during cross examination has stated that she is not sure about the ownership of the vendor. When the vendor is not the owner of the property, in that case, he is unable to transfer the property through unregistered agreement. Otherwise also, in case of a vacant land, owner would be deemed to be in possession of plot unless otherwise proved. The plaintiff is not proved to be the owner nor in possession of the suit property and as such both the Courts below have rightly dismissed the suit of the plaintiff. So, I have no hesitation in holding that no substantial question of law has arisen in the present regular second appeal. Consequently, the appeal is without any merit and the same stands dismissed.

14.9.2015
SN

(K.C.PURI)
JUDGE