

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 950 of 2014 (O&M)
Date of decision:- 01.07.2015

Narata and another ...Appellants

Versus

Jangir Ali & ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. J.P. Dhull, Advocate
for the appellants.

RITU BAHRI J.

Defendants-Appellants (for short 'the appellants') are in second appeal against the judgment of reversal dated 16.10.2013, whereby learned District Judge allowed the first appeal of the plaintiff-respondent No.1 (for short 'respondent No. 1') and the decree passed by the learned trial Court dismissing the suit of respondent No. 1, was set aside.

Respondent No. 1 file a suit for permanent injunction restraining appellants and Harbans-respondent No. 2 and Gurmail Singh-respondent No. 3 into the lawful and peaceful possession of respondent No. 1 over the residential house mentioned in para No. 1 of the plaint, as the same was purchased from one Banta Singh son of Tarlok Singh in two installments i.e on 11.05.2005 and 19.09.2005. Banta Singh had duly executed affidavit to this effect on receipt of the full and final payment of sale consideration

and delivered the possession of the said residential house as owner to respondent No. 1.

On notice, appellants as well as respondent Nos. 2 and 3 filed their joint written statement taking a stand that respondent No. 1 is neither owner nor in possession of the house in dispute. No registered sale deed has been executed by Banta Singh in favour of respondent No. 1. Banta Singh was also not competent to sell the house in favour of respondent No. 1. The affidavits dated 11.05.2005 and 19.09.2005 were forged and fabricated. Tara Singh was owner in possession of the house in dispute. After the death of Tara Singh, his son Banta Singh and daughter Banto Devi became owners in possession of the house in dispute in equal shares. In private partition between Banta Singh and Banto Devi, two rooms, one verandah, one kitchen towards northern side fell to the share of Banto Devi whereas two rooms and bathroom towards southern side fell to the share of Banta Singh. Banto Devi handed over the possession of two rooms, verandah and kitchen to the appellants without consideration out of love and affection, who are uncles of Banto Devi. After the death of Banta Singh, Smt. Banto Devi becomes owner of other portion of the suit property. She again handed over the possession of the property which fell to the share of Banta Singh to the appellants and endorsement to this effect was also written on the back of

the agreement dated 17.01.2006.

The trial Court examined PW2/A, PW2/B and site plan PW3/A and held that identity of the house in question could not be proved by respondent No. 1. On the other hand, appellants were failed to examine Banto Devi for proving their possession over the house in question. The trial Court dismissed the suit filed by respondent No. 1.

On appeal filed by respondent No. 1, the Lower Appellate Court accepted the appeal and set aside the trial Court judgment and decreed the suit of respondent No. 1. The Lower Appellate Court again examined document dated 11.05.2005 Ex PW2/A and 19.05.2005 PW2/B which makes it very clear that the suit property has been sold in two phases Further as per electricity bill Ex PA issued in favour of respondent No. 1 in the year 2009 makes it further clear that he is in possession over the suit property and the suit property has been properly depicted in the site plan Ex PW3/A. As per photographs Ex PW5/A to PW5/D, the present of family members of respondent No. 1 has been duly depicted. As per the findings recorded by the trial Court, it was not proved that who is in actual possession over the suit property.

Once respondent No. 1 had been able to prove his possession over the suit property which he had purchased in the year 2005, vide document dated 11.05.2005 Ex PW2/A

and 19.05.2005 PW2/B coupled with the electricity bill Ex PA issued in favour of respondent No. 1 in the year 2009, the finding recorded by the lower Appellate Court, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

July 01, 2015
G Arora

(RITU BAHRI)
JUDGE