

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

**CR No.991 of 2014(O&M)
Date of Decision- 29.09.2016**

Smt. Savitri Devi ... Petitioner

Versus

Smt. Krishna ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjay Vij, Advocate for the petitioner.

Mr. Aman Priye Jain, Advocate for respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner-Savitri Devi has filed this revision petition against the order dated 11.12.2013 passed by District Judge, Gurgaon declining the prayer of the petitioner for transfer of Civil Suit No.87 dated 29.02.2012 titled as Smt. Krishna Vs. Smt. Savitri Devi from the Court of Additional Civil Judge (Senior Division) Sohna to Gurgaon.

[2]. Plaintiff Smt. Krishna filed a civil suit for permanent injunction against defendant-petitioner in the Court of Civil Judge (Senior Division), Gurgaon to the effect that she was owner of 10 marlas plot which was purchased by her vide sale deed dated 24.02.2012 out of rectangle No.184, killa No.11 (4-10), rectangle No.185, killa No.6 (8-0), 15 (8-0) which was bounded by boundary wall. It was alleged that defendant-petitioner wanted to grab the same and wanted to oust the plaintiff forcibly and intended to raise construction illegally.

[3]. Claim of the plaintiff was denied by the defendant-petitioner and it was pleaded that the suit was on account of concealment of material facts. Defendant-petitioner contended that she had purchased land measuring 2 kanals, 12 marlas by way of two registered sale deeds of even date i.e. 08.12.2005 out of the aforesaid rectangle and killa numbers. The area so purchased by the defendant was 1570 square yards. Defendant-petitioner had sold 1242 square yards out of aforesaid 1570 square yards and the remaining area measuring 328 square yards was in exclusive ownership and possession of defendant-petitioner which was also bounded by boundary wall and was having a gate. The factum of boundaries was very much mentioned in the sale deeds of the defendant whereas in the sale deed of the plaintiff-respondent there was no mentioning of boundary, rather the plaintiff was not in the knowledge of exact portion purchased by her.

[4]. Interim application for grant of *ad interim* injunction was rejected by the trial Court on 30.11.2012. In the meanwhile, new Court was set up at Sohna and the case was transferred from Gurgaon to Sohna. Petitioner-defendant claimed herself to be 100% disable and is permanent resident of Gurgaon on the address of House No. C-77, Sanjay Gram, Ward No.5, Gurgaon, where ration card of the petitioner-defendant along with her family was prepared. Haryana resident certificate was issued to the petitioner on the aforesaid address on 16.10.2007, as per documents attached with the revision petition.

[5]. Petitioner filed an application for transfer of the civil suit from Sohna to Gurgaon i.e. the original place where it was filed. In the suit, the address of the defendant was shown to be of village Alipur, Tehsil Sohna, District Gurgaon. District Judge rejected the prayer of the petitioner for transfer of the civil suit from Sohna to Gurgaon on the premise that the case was transferred to Sohna on account of setting up of new Court at Sohna. Petitioner was found to be resident of Tehsil Sohna. Respondent was also found to be resident of Tehsil Sohna. Factum of petitioner being 100% disabled was not noticed by the District Judge while rejecting the prayer. The petitioner did not plead the factum of her permanent residence at Gurgaon in the application.

[6]. I have perused the application filed by the petitioner for transfer the case from Sohna to Gurgaon. In para Nos.1 and 2 of the application, it was mentioned that the Civil Suit titled as Smt. Krishna Vs. Smt. Savitri Devi was pending in the Court at Sohna and for awaiting order from this Court. The petitioner has pleaded her disability to the tune of 100% in para No.4 of the application. Petitioner pleaded that she has been suffering from disease known as Muscular Dystrophy for the last more than 7 years and was undergoing treatment in AIIMS, New Delhi. Petitioner also pleaded that her husband was a retired Government servant and she was blessed with two school going daughters. The financial condition of the applicant did not allow her to engage new counsel at Sohna.

The factum of residence in Gurgaon was not pleaded in the

application, but the fact remains that her ailment to the extent of 100% disability was not noticed by the District Judge in the impugned order.

[7]. Be that as it may, the factum of disability of the petitioner was required to be noticed and adjudicated upon. In my considered opinion, this case is required to be remanded back to the District Judge for passing a fresh order on the basis of plea of the petitioner being 100% disabled and permanent resident of Gurgaon itself.

[8]. This case is remanded back to the District Judge for fresh decision on merits particularly in the light of plea of the petitioner that she being 100% disabled on account of Muscular Dystrophy for the last 7 years and being permanent resident of Gurgaon cannot move frequently to Sohna for attending the case, in view of facts and circumstances as pleaded hereinabove. The District Judge, Gurgaon without being influenced by any observation made in the preceding part of the order, shall pass a speaking order on merits in accordance with law.

[9]. This revision petition is allowed subject to payment of Rs.2000/- as costs payable by the petitioner to the respondent. Payment of cost shall be a condition precedent for allowing such an indulgence by the District Judge, Gurgaon.

29.09.2016

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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No