

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

ESA No.212 of 2016(O&M)

Date of decision:27.10.2016

Manjit Kaur

....Appellant

VERSUS

Amarjit Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Mohit Jaggi, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against orders dated 15.05.2015 passed by the Additional Civil Judge (Senior Division), and dated 01.09.2016 passed by the Additional District Judge whereby the objections filed by the appellant were dismissed by the executing Court and the order dated 15.05.2015 was affirmed in appeal.

A brief backdrop of the case is that Amarjit Singh (respondent) filed a suit for specific performance of agreement to sell dated 16.03.1995, in respect of house No.1670, Sector 22-B, Chandigarh in which Darshan Singh son of Uttam Singh and Mona Singh wife of Darshan Singh were arrayed as defendants. The suit was decreed vide judgment and decree dated 21.09.2010 and appeal against the decree of the trial Court was dismissed on 01.07.2014.

The decree holder (respondent) filed an application for execution of the decree. The executing Court issued warrants of possession on 21.03.2015. The appellant filed an application under Order 21 Rules 97, 98 and 101 read with Section 151 of the Code of Civil

Procedure, 1908 (in short 'CPC') claiming that as she is in occupation of first and second floors of the property in dispute as a tenant, she cannot be dispossessed from that portion in execution of the decree in which she was not a party. Another submission made by the appellant is that the respondent can seek possession of her portion only by taking recourse to proceedings under the Rent Act.

Counsel for the appellant has submitted that previously Smt. Naranjan Kaur, a distant relative of appellant was owner of the suit house and she agreed to let out first and second floors to the applicant on 02.10.1990 and since then the appellant along with her family is residing there as a tenant. Mrs. Naranjan Kaur through her General Power of Attorney (in short 'GPA') Sh. Darshan Singh sold the house to Mrs. Mona Singh wife of Darshan Singh vide registered sale deed dated 29.12.1994. Mrs. Mona Singh through her GPA Darshan Singh entered into an agreement to sell dated 16.02.1995 with Avtar Singh. Sh. Avtar Singh executed a rent agreement dated 16.02.1995 regarding commencement of tenancy w.e.f. 01.03.1995 and since then the appellant is paying monthly rent with periodical increase to said Avtar Singh and present rate of rent is Rs.6,500/- excluding water and electricity charges. It is vehemently argued that in the sale deed executed by Smt. Naranjan Kaur in favour of Mrs. Mona Singh, there is reference that the house has been occupied by the tenants for the last 20 years, hence vendor has delivered possession of the said house to the vendee along with tenancy rights. The appellant placed on record the rent agreement dated 16.02.1995 executed by Avtar Singh in regard to creation of tenancy qua first and second floors of the house in question but the executing Court neither framed issue(s) nor provided an opportunity to adduce evidence to establish that she is in

possession of first and second floor of the house in her independent right as a tenant and rather dismissed the objections in an illegal manner. In addition, it is submitted that the appellant has placed on record the documents (Annexures P-6 to P-14) issued by the Government/public authorities sufficient to establish her plea that she is in possession of first and second floors of the house in dispute even prior to the sale deed dated 29.12.1994 was executed by Smt. Naranjan Kaur in favour of Smt. Mona Singh (daughter of the appellant). It is prayed that the orders passed by the Courts below may be set aside and the matter be remitted to the executing Court for decision afresh after framing of issues and producing evidence by the parties.

I have heard counsel for the appellant, perused the paper-book and various annexures appended with the petition.

At the outset, it is pertinent to note that the Courts below have not rejected plea of the appellant in regard to possession of first and second floor of house No.1670, Sector 22-B, Chandigarh. The crucial question before the Court is as to the capacity in which the appellant is in possession of first and second floor of the property in question or to say differently as to whether the appellant is in possession in her own right as a tenant.

Counsel for the appellant has fairly informed that there is no documentary evidence on record with regard to creation of tenancy in favour of the appellant by Mrs. Naranjan Kaur w.e.f. 02.10.1990 or payment of rental by the appellant to said Smt. Naranjan Kaur. Similarly, there is no document on record with regard to payment of any rent by the appellant to Sh. Avtar Singh who purportedly agreed to purchase the suit house vide an agreement to sell dated 16.02.1995 and executed a rent

agreement in favour of the appellant. Not only this, nothing has been mentioned in the objection petition as to how much was the rental fixed by Smt. Naranjan Kaur and what was the mode of payment of rent as Smt. Naranjan Kaur was admittedly residing in Birmingham (U.K.). As per plea of the appellant, Smt. Naranjan Kaur happened to be her relative.

The sale deed executed by Smt. Naranjan Kaur in favour of Smt. Mona Singh makes reference that the house is occupied by the tenants for the past 20 years and the vendor has delivered possession of the said house to the vendee along with tenancy rights. Admittedly, the appellant does not claim her possession of any part of the suit house for the past 20 years reckoned w.e.f. December 1994, the date of sale deed (Annexure P-18). The appellant, in the given circumstances, cannot derive any advantage to her contention from clause I of the sale deed, detailing the terms and conditions agreed between the vendor and vendee.

Much stress has been laid on the rent agreement dated 16.02.1995 purported to be executed between the appellant and said Avtar Singh. An agreement to sell executed by Mona Singh (erstwhile owner of the suit house) in favour of Sh. Avtar Singh has not seen light of the day. It appears that Sh. Avtar Singh never initiated any proceedings seeking performance of the said agreement to sell when admittedly no sale deed was executed by Mona Singh in favour of Sh. Avtar Singh. The very fact that Avtar Singh never asserted any claim on the basis of an agreement to sell dated 16.02.1995 is sufficient to falsify and belie plea of the appellant that either any such agreement to sell was executed in favour of Sh. Avtar Singh or Avtar Singh ever became competent to create any tenancy in favour of the appellant. This apart, as the rent agreement is purported to be signed both by Sh. Avtar Singh and the present appellant, the same is

otherwise inadmissible in evidence for want of registration being a lease agreement. As has been noticed hereinbefore but for the sake of repetition, there is no documentary evidence with regard to payment of any rent by the appellant in favour of Sh. Avtar Singh. Even otherwise, as has been rightly held by the Courts below that Sh. Avtar Singh never became owner of the suit house, therefore, he was not competent to create any tenancy in favour of the appellant. Analyzed from any angle, the appellant cannot derive any advantage to her contentions on the basis of rent agreement (Annexure P-5).

The appellant is, admittedly, mother of Mrs. Mona Singh who became owner of the suit house on the basis of sale deed dated 29.12.1994 executed by Smt. Naranjan Kaur. The sale deed also makes reference to an agreement to sell having been executed between the vendor and vendee. The appellant has placed on record certain documents i.e. identity card issued by the Election Commission of India in the name of Manjit Kaur dated 06.12.1994 (Annexure P-6), ration card issued in the year 1996 by the Chandigarh Administration (Annexure P-7), identity card issued by the Election Commission of India to Gurpal Singh son of Mahinder Singh dated 12.04.1998 (Annexure P-8), identity card issued by the Election Commission of India to Jasprit Kaur daughter of Mohinder Singh dated 05.02.2006 (Annexure P-9), aadhar card of Manjeet Kaur (Annexure P-10), death certificate of Mohinder Singh of 1999 (Annexure P-11), copy of passport of Manjeet Kaur issued in the year 2015 (Annexure P-12), copy of passport of Sh. Mohinder Singh issued in March 1993 (Annexure P-13), identity card of Mohinder Singh issued by the Election Commission of India dated 06.12.1994 (Annexure P-14). The document (Annexure P-13) is the latest document of the year 1993 wherein address of the house in

question has been given. However, all these documents, at best, is an evidence of possession of the house in question by the appellant and her family since the year 1993. There is no material on record to prima facie establish plea of the appellant that she was inducted as a tenant by Mrs. Naranjan Kaur and she continues to be a tenant under the successors in interest of her landlady namely Mrs. Mona Singh and Amarjit Singh. As the appellant has failed to prima facie establish her plea that she is in occupation of part of the suit house in her right, title or interest, the Courts below have rightly rejected her plea without framing issues with an intent to save the successful decree holder from ordeal of another bout of litigation before recovering possession in pursuance of decree dated 21.09.2010 that stands affirmed in appeal. It further appears that as the appellant is none else than mother of Mrs. Mona Singh, judgment debtor, the objection petition is a device to delay execution of the decree and to deny the decree to fructify.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

OCTOBER 27, 2016		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no