

RSA-102-2013(O&M)

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-102-2013(O&M)

Date of decision : 12.01.2016

District Council for Child Welfare, Kaithal

... Appellant

Versus

Anita Goyal and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Bhardwaj, Advocate
for the appellant.

Mr. Rakesh Nagpal, Advocate
for respondent No.1.

REKHA MITTAL. J.

The present appeal lays challenge to the judgment and decree dated 11.01.2012 passed by the District Judge, Kaithal affirming the judgment and decree dated 10.12.2009 passed by the Civil Judge (Senior Division), Kaithal whereby the suit filed by the appellant/ plaintiff for possession and permanent injunction has been dismissed.

In brief, the case of the appellant is that suit land measuring 19 kanals 9 marlas to the extent of 2715 square yards detailed in para 1 of the judgment of the trial Court was purchased by Municipal Committee, Kaithal (defendant No.2 therein) vide sale deed bearing vasika No.515 Bahi No.289/1 page No.163 dated 25.02.1964 having site plan appended thereto. The said land was donated by defendant No.2 for construction of

Bal Bhawan vide resolutions No.80 dated 20.10.1989 and No.15 dated 22.06.2000. The appellant took over possession of said land, constructed the Bal Bhawan on a portion of it for carrying out the child welfare activities in District Kaithal. Respondent No.1 encroached upon some portion of the land by filling plinth for construction of shop on the western side of Bal Bhawan vacant land 28' x 11' depicted in red colour in the site plan appended with the plaint. In the demarcation conducted by the revenue authority on the application filed by the appellant, it was reported that some people are in illegal possession of 600 square yards of Bal Bhawan land and respondent No.1 is one of them.

Respondent No.1 filed the written statement raising preliminary objections regarding maintainability of the suit; locus standi of the plaintiffs; and concealment of true and material facts from the Court. It was averred that answering defendant purchased 2566 square yards area vide sale deed No.2721 dated 25.07.2001 registered on 27.07.2001, a part of khasra No.358 and 359 out of total land measuring 19 kanals 9 marlas. After purchasing the land, she raised construction of shop and her possession is shown in red colour in the site plan dated 30.03.2004. The appellant got some land in gift from defendant No.2 who in turn purchased it from Om Parkash son of Kashi Ram, Hari Chand son of Banwari Lal and Birumal son of Radha Mal vide sale deed No.24.02.1964. The said vendors sold 2715 square yards land to M. C. Kaithal but they were co owners to the extent of 1543 square yards (2

kanals 11 marlas) in khasra No.358 and 359 but at the spot, it is in possession of 2100 square yards, more than their share illegally and forcibly. She has made reference to jamabandi for the year 1999-2000, letters of D. C. Kaithal dated 02.05.2001, 11.8.2000, sanctioned site plan of shop No.58, 59, 65 situated adjacent to site of Bal Bhawan, letter dated 24.04.2000 of Executive Officer, Municipal Committee, Kaithal, letter dated 11.12.2000 of Deputy Commissioner, Kaithal, letter dated 07.11.2000 of Executive Officer, M. C. Kaithal, copy of order passed by the Additional District Judge in case titled 'Anita Kumari Vs. M. C. Kaithal'.

Respondent No.2 (proforma respondent herein) also filed the written statement admitting that land owned by the answering respondent was donated to the appellant/plaintiff for construction of Bal Bhawan Kaithal. Respondent No.1 has already filed a suit for injunction against Municipal Committee for removing temporary kiosks from the plot in dispute. Respondent No.1 had an evil eye on vacant piece of land and started laying her claim to the said land. To satisfy her greed, the appellant in connivance with Sh. Anurag Sikka, Vinod Kumar, Rajinder Kalra and Smt. Sushma got the sale deed executed and registered in her favour which is manipulated and a waste paper.

Appellant / plaintiff filed the replication reiterating its stand taken up in the plaint while controverting the averments raised in the written statement.

The controversy between the parties led to framing of following issues by the learned trial Court:-

1. *Whether the plaintiff is entitled for a decree for suit for possession and permanent injunction as consequential relief as prayed?OPP*
2. *Whether the suit of the plaintiff is not maintainable?OPD*
3. *Whether the plaintiff has concealed the true and material facts from the Court?OPD*
4. *Whether the plaintiff has no locus standi to file the present suit?OPD*
5. *Whether the court has got no jurisdiction to entertain and try the present suit?OPD*
6. *Relief.*

The trial Court permitted the parties to adduce evidence in support of their respective contentions. After having heard learned counsel for the parties and bestowing its consideration to the materials on record, the learned trial Court came to hold that the vendors of Municipal Committee, Kaithal had only 1543 square yards land of their ownership whereas the sale deed has been executed by them for an area measuring 2715 square yards and the appellant/ plaintiff is in possession of area measuring 2100 square yards as per report of demarcation. It was further held that as the appellant/plaintiff failed to establish that it became lawful owner of 2715 square yards area on the basis of gift of land by respondent No.2 / defendant No.2, the appellant/plaintiff is not entitled to decree of possession and permanent injunction. The findings recorded by the trial

Court were affirmed in appeal.

Counsel for the appellant is not in a position to point out any materials on record on the basis whereof it can be held that vendors of Municipal Committee, Kaithal were owners to the extent of 2715 square yards area out of land measuring 19 kanals 9 marlas comprised in khasra No.359 and 358 situated in revenue estate of Patti Gaddar, Kaithal and now in the municipal limits of Kaithal. As Municipal Committee Kaithal could not get any better rights than that of its vendor(s), it could not transfer any rights more than it had in favour of the appellant on the basis of gift. No such arguments are advanced that the findings recorded by the trial Court and affirmed in appeal are either the result of misreading of evidence or ignoring any materials on record much less being perverse. In this view of the matter, no substantial question of law arises for adjudication, as has been sought to be raised in the grounds of appeal or otherwise. There is no illegality or infirmity in the concurrent findings recorded by the Courts below as would call for intervention.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed. No order as to costs.

(REKHA MITTAL)
JUDGE

January 12, 2016.
Davinder Kumar