

RSA-103-2013(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-103-2013(O&M)

Date of decision : 12.01.2016

District Council for Child Welfare, Kaithal

... Appellant

Versus

Urmila Devi and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr.Ashwani Gaur, Advocate
for respondent No.1.

REKHA MITTAL. J.

The present appeal lays challenge to the judgment and decree dated 26.03.2011 passed by the Additional District Judge, Kaithal affirming the judgment and decree dated 07.11.2009 passed by the Civil Judge (Junior Division), Kaithal whereby the suit filed by the respondent/plaintiff for permanent injunction has been decreed.

The facts, in brief, are that that the respondent purchased a plot measuring 30.68 square yards old MCK NO.114-A/15, 114B/15 from Satbir Singh vide registered sale deed No.3232 dated 31.01.2006, a part of khasra No.358-59 out of total land measuring 3 kanals 16 ½ marlas situated in village Patti Gaddar, Tehsil and District Kaithal. It was prayed that the appellant-defendant be restrained from interfering in her

possession by raising construction illegally and forcibly.

The appellant filed the written statement raising preliminary objections regarding maintainability of the suit; jurisdiction of the Court and concealment of true and material facts from the Court. It is averred that the appellant is the owner in possession of the land donated by the M.C. Kaithal vide two separate resolutions dated 10.10.1989 and 22.06.2000. Prior to this, the M. C. Kaithal purchased land measuring 2715 square yards vide registered sale deed No.511/1 dated 25.06.1964. The respondent-plaintiff has encroached upon the area of the appellant illegally and forcibly for which the appellant reserves its right to get the same vacated from the respondent-plaintiff in due course of law. The alleged sale deed is stated to be illegal, null and void. The appellant got the suit land demarcated from the competent authority which revealed that the respondent-plaintiff is in illegal occupation of the public property.

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

1. *Whether the plaintiff is entitled to a decree for permanent restraining the defendants from dispossessing the plaintiff from the suit property by way of encroaching the same by raising construction thereon illegally and forcibly or in any other manner. OPP*
2. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
3. *Whether the civil court has got no jurisdiction to entertain and try the present suit as jurisdiction of court*

is barred under Section 15 of the Punjab Premises Act?OPD

4. *Whether the plaintiff has no cause of action against the defendant?OPD*

5. *Whether the plaintiff is guilty of suppression of true and material facts from the court and has not approached the court with clean hands?OPD*

6. *Whether the mandatory notice under Section 80 C.P.C. has not been served upon the defendants before filing the present suit?OPD*

7. *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 respondent-plaintiff is in lawful possession of the suit land and the appellant is restrained from dispossessing the respondent-plaintiff by raising construction illegally and forcibly. 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 Municipal Committee, Kaithal became owner to the extent of 2715 square yards area out of land measuring 3 kanals 16 ½ marlas comprised in khasra No.359 and 358 situated in the 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