

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

**R.S.A No.216 of 2013 (O&M)
Date of decision : 28.04.2016**

Kashmir Kaur

..... Appellant

Versus

M/s Kartar Colonizers Pvt. Ltd. Etc.

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Satinder Khanna Advocate
for the appellant.

Mr. Vishal Aggarwal, Advocate
for respondents.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-defendant no.3 against the judgment and decree dated 16.10.2012 passed by the learned Additional District Judge, Ludhiana, whereby the appeal filed by her against the judgment and decree dated 07.12.2010 passed by the learned Civil Judge (Junior Division), Ludhiana, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent no.1 has filed the suit for permanent injunction restraining the appellant-defendant from interfering in the

peaceful possession of the plaintiff in any portion of the suit property measuring 400 sq. yds. comprised of khasra no. 10//2, 23/2, 17//3/2 on the grounds *inter alia* that the plaintiff is owner in possession of the suit property. It had collected the material to raise the construction therein, but defendants came to the suit property and obstructed the plaintiff to raise construction. They forcibly tried to take over the possession of the suit property. Hence, the suit.

4.. Appellant-defendant no. 3 contested the suit on the grounds *inter alia* that the plaintiff-company was the owner of the suit property, which was purchased by the appellant-defendant on installment basis and after completion of the same amount to Rs. 28,000/- plaintiff-company executed an agreement to sell dated 15.04.1982 in favour of the appellant-defendant and also handed over the vacant possession thereof. The entire amount of Rs. 28,000/- was paid by the appellant-defendant to the plaintiff-company. She several times approached Avtar Singh for execution and registration of the sale deed. But, in March 2002, he has taken the original agreement to sell on the pretext that it was required by him for the purpose of registration of the sale deed and demanded Rs. 25,000/- for the same. The defendant handed over the same to Avtar Singh in good faith. She has already constructed *kacha* room in the suit property and also raised the boundary wall and is in exclusive possession thereof. Thus, she pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for permanent injunction as

prayed for?OPP

2. Whether the suit filed by the plaintiff is not maintainable?OPD
3. Whether the plaintiff has no cause of action to file the present suit?OPD
4. Whether the plaintiff is estopped by his act and conduct from filing the present suit?OPD
5. Whether the suit of the plaintiff is bad for mis joinder of necessary parties?OPD
6. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiffs-appellants, vide impugned judgment and decree dated 07.12.2010.

7. Aggrieved with the aforesaid judgment and decree, appellant-defendant no.3 preferred the appeal and the same was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 16.10.2012. Hence this Regular Second Appeal.

8. I have heard Mr.Satinder Khanna, Advocate, learned counsel for the appellant, Mr. Vishal Aggarwal, Advocate, learned counsel for the respondents and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that plaintiff-respondent no.1 is a real estate company. Whereas, the appellant is a poor illiterate lady. She has been defrauded by Avtar Singh, the employee of company. He contended that there is no material on file to show that the plaintiff-company is in possession of the suit property. The site plan produced by the plaintiff-company is not connected with the khasra numbers mentioned in the jamabandi. He further contended that in-fact the plaintiff-company had agreed to sell the

plot in dispute to the appellant and has also received the entire sale consideration by installments. Even, the agreement to sell dated 15.04.1982 was executed in her favour. But, the same was fraudulently taken away by Avtar Singh and the same was never returned back to her. He contended that appellant has already raised the construction of *Kacha* room and boundary wall in the suit plot. She is in exclusive possession thereof. The electricity connection and water connection in the name of appellant has been installed therein. The appellant has placed on record the bills Ex.D-1 to Ex.D-24 pertaining to the suit property which establishes her possession over the suit property. Thus, he contended that as the plaintiff-respondent no.1 has not been able to establish its possession over the suit property, so, it was not entitled for the grant of injunction.

10. On the other hand, learned counsel for the plaintiff-respondent no.1 contended that there is no dispute about the identity of the suit property. The appellant-defendant has admitted that the plaintiff-respondent no.1 was owner in possession of the suit plot. She has alleged that the same was sold to her vide agreement to sell dated 15.04.1982. But, no such agreement has been brought on record. He contended that it is not believable that the appellant would have kept mum and did not take any step to get back the agreement allegedly taken away by Avtar Singh. He contended that from the documents placed on record, it is established that the plaintiff is owner in possession of the plot in dispute. The bills Ex.D-1 and Ex.D-2 are not connected to the suit plot. Appellant herself admitted in the cross-examination that those relates to her residential

house, which is a separate property. Thus, he contended that as the plaintiff is owner in possession of the plot in dispute, so, his suit has rightly been decreed by the learned Courts below.

11. I have duly considered the aforesaid contentions.

12. Plaintiff-respondent no.1-company has filed the suit for permanent injunction restraining the appellant-defendant and her co-defendants from interfering in its peaceful possession on the plea that the plaintiff-company is owner in possession of the suit plot. The plea raised by learned counsel for the appellant that the khasra numbers mentioned in the jamabandi produced by the plaintiff-respondent are not connected with the plot in dispute, carries no substance in view of the case of the appellant herself. In the written statement, the appellant has admitted the plaintiff-company to be the owner of the suit plot. She alleged that the said plot was purchased by her on installment basis from the plaintiff-company. Appellant-company has executed an agreement to sell dated 15.04.1982 in her favour and also handed over the vacant possession of the suit plot. Thus, the appellant-defendant no.3 has categorically admitted in the written statement the ownership of the plaintiff-company qua the plot in dispute. She has also alleged that the possession of the suit plot was transferred to her by the plaintiff-company. Meaning thereby, plaintiff-company was in possession thereof. The appellant has alleged that she has purchased the suit plot from the plaintiff-company by dint of agreement to sell dated 15.04.1982 and the possession thereof was also delivered to her. But, the appellant-defendant no.3 has not been able to establish the plea raised by her regarding the purchase of the plot. It does

not appeal to the reasons that she has handed over the original agreement to sell dated 15.04.1982 to Avtar Singh without even retaining the copy thereof. It is also not believable that when Avtar Singh did not return the agreement to sell, she will keep mum and will not take any legal action. She could have produced the secondary evidence to prove the said agreement. She has alleged that she has purchased the plot on installments and had paid Rs. 28,000/- by way of installments. She must have obtained the receipt with respect to the payment of the installments. The plaintiff-respondent no. 1 is a private limited company, which has to maintain the accounts regarding the receipt of the money. Appellant-defendant has not produced any receipt issued by the plaintiff-company in her favour to prove the payment of any installment nor any effort has been made to summon the record of the company to prove the payment of any installment. The appellant-defendant no.3 has also not filed any suit for specific performance of the agreement to sell dated 15.04.1982. Thus, the appellant-defendant no. 3 has not been able to establish the existence of the alleged agreement to sell dated 15.04.1982 and the fact that vide said agreement, she has purchased the plot in dispute and came in possession thereof.

13. Much stress has been laid by learned counsel for the appellant on electricity and water bills produced by the appellant-defendant no.3. But, the same are also of no help to establish the possession of the appellant-defendant over the plot in dispute in view of her categoric admissions in the cross-examination. Learned First Appellate Court has observed that appellant-defendant no. 3 has admitted

in the cross-examination that none of the documents produced by her bears the khasra number of the property. She further admitted that residential house bearing no. 128, Gali no. 8, New Ashok Nagar, Ludhiana is a separate property, then that of the suit plot. She further admitted that the suit property is situated near to her residential house. She further admitted that electric connection is installed in her residential house. The bills produced by her pertained to house no.128 and appellant has categorically admitted that the residential house no..128 is a separate property then that of the suit property. So, the documents/bills produced by the appellant-defendant no. 3 are not connected with the suit plot.

14. As already mentioned, the appellant-defendant no.3 has not disputed the ownership of the plaintiff-company qua the plot in dispute. She has also pleaded that she received the possession thereof from the plaintiff-company, which she has failed to establish. Consequently, there is no escape from the conclusion that the plaintiff-respondent no.1-company is the owner in possession of the plot in dispute. So, I have no reason to differ with the concurrent findings recorded by the learned Courts below, which do not suffer from any perversity.

15. Thus, no question of law, much less, the substantial question of law arises in the present appeal.

16. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

April 28, 2016

s.khan

(DARSHAN SINGH)
JUDGE