

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

111

Regular Second Appeal No.383 of 2015 (O&M)
Date of Decision: March 03, 2016

Sabhadra Kaur

...Appellant

Versus

Hukam Chand Garg

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Puja Chopra, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.1069-C of 2015

Prayer in this application is for permission to place on record Annexures P-1 to P-3 and for exemption from filing the certified copies of said Annexures and the judgment and decree dated 28.05.2012 of learned trial Court.

Application is allowed.

Exemption from filing the certified copies of Annexures P-1 to P-3 and the judgment and decree dated 28.05.2012 of learned trial Court is granted and the same are taken on record.

RSA No.383 of 2015

Challenge in this appeal is to the judgment and decree dated 28.05.2012 passed by the Civil Judge (Junior Division), Patiala, whereby the suit filed by the appellant-plaintiff for declaration to the effect that the appellant-plaintiff is owner of plot shown in red colour in the site plan attached with the plaint on the basis of an oral gift made by its owner Joginder Singh son of Waryam Singh in favour of the appellant-plaintiff regarding the plot situated at Green Park, Ekta Colony, Patiala and for permanent injunction restraining the respondent-defendant from interfering

or cause to interfere or from dispossessing or cause to dispossess the appellant-plaintiff from the plot as shown in the site plan, stands dismissed, appeal against which preferred by the appellant-plaintiff has been dismissed by the Additional District Judge, Patiala, on 19.08.2014.

2. It is the contention of learned counsel for the appellant that the judgments and decree passed by the Courts below cannot sustain, specially in the light of the fact that the Courts acknowledged that the plot which is asserted to be in possession of the appellant-plaintiff, is not the ownership of the respondent-defendant. She contends that if the said property is not the ownership of the respondent-defendant, he cannot interfere in the possession of the property of the appellant-plaintiff. Assertion has also been made that the report of the Local Commissioner only demarcates and identifies the property of the respondent-defendant and does not speak anything about the plot which is asserted by the appellant-plaintiff to be in her possession. Contention has also been raised that since the oral gift has been given to the appellant-plaintiff, registration thereof is not required. On this basis, counsel contends that the impugned judgments and decree cannot sustain and deserve to be set aside and the suit of the appellant-plaintiff decreed.

3. I have considered the submissions made by learned counsel for the appellant and with her able assistance, have gone through the impugned judgments but do not find myself in a position to agree with her assertions.

4. The true owners of the property namely Ajit Singh etc., legal representatives of Joginder Singh (since Joginder Singh has died) have not been impleaded as a party-respondent in the suit. The injunction, therefore,

as prayed for, cannot be granted, rather it would not be maintainable. That apart, the assertion of ownership over the plot on the basis of an oral gift which again she has not been able to prove, even if found to be correct, the same required registration as it is an immovable property which is admittedly valued more than ₹100/-. The declaration, therefore, as prayed for, cannot be granted.

5. The assertion of the counsel for the appellant that she is in possession of the said property and the respondent has no connection with the property in question again cannot be accepted in the light of the report Exhibit D-11 of the Local Commissioner, who was appointed by the trial Court and had visited the spot in the presence of the parties including the appellant-plaintiff and at that time, the appellant-plaintiff had not objected that the property in dispute is not the one which is being visited by the Local Commissioner. Although it has been asserted by the counsel for the appellant that objections were raised to the report of the Local Commissioner but the same cannot be accepted in the light of her presence marked at the spot and her signatures also find mention which have been put at the spot.

6. The findings and the principles applied to the case in hand being in accordance with law and based upon the pleadings and the evidence, do not call for any interference.

7. No other point has been urged or argued by the counsel for the appellant.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by

both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.1070-C of 2015, stands disposed of as infructuous.

March 03, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE