

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

RSA No.846 of 2016 (O&M)

Decided on: 29.03.2016

Krishna

....Appellant

Versus

Jagroop

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Manoj Makkar, Advocate
for the appellant.

REKHA MITTAL J.

The unsuccessful defendant is in appeal to assail the consistent findings recorded by the Courts below whereby the suit filed by respondent/plaintiff was decreed by the learned trial Court and the findings recorded by the trial Court were affirmed by the First Appellate Court by dismissal of an appeal preferred by Ms. Krishna against the judgment and decree dated 19.10.2013.

Jagroop son of Suraj Bhan-respondent prayed for permanent injunction restraining the defendants from interfering in his peaceful possession over the suit property, detailed in para 2 of the judgment passed by the learned trial Court on the premise that the suit property was transferred in favour of the plaintiff vide sale deed No.2504 dated 13.12.2010 got registered by its erstwhile owner Sh. Subhash for a consideration of Rs.4,97,000/- and possession was delivered to the plaintiff. The suit property is in dilapidated condition

and the plaintiff wants to re-construct the same but the defendants threatened to interfere in his peaceful possession.

The defendants including the present appellant filed the written statement, raised certain preliminary objections in regard to maintainability, cause of action, *locus standi*, concealment of facts, estoppel, jurisdiction, misjoinder and non-joinder of parties. On merits, it was submitted that Subhash was neither owner nor in possession of the suit property and the same is owned and possessed by the defendants. Subhash is mentally retarded, 90% disabled and his disability was proved in case titled "*Subhash vs Bhoop Singh*" decided on 19.12.2009. They filed a counter-claim seeking declaration that the alleged sale deed bearing No.2504 dated 13.12.2010 be declared as illegal, null and void and not binding upon the defendants/counter-claimants.

The respondent/plaintiff filed his response to the counter-claim, controverting the allegations in regard to incompetence of Sh. Subhash to execute the sale deed.

On due consideration of the pleadings, evidence adduced on record and submissions made by respective counsel, the learned trial Court decreed the suit while the counter-claim preferred by the defendants was ordered to be dismissed. As has been noticed hereinbefore, the appeal preferred by Smt. Krishna did not find favour with the Additional District Judge, Rohtak and the Appellate Court affirmed the findings recorded by the learned trial Court.

Still feeling dis-satisfied, the matter has been carried in

appeal before this Court.

Counsel for the appellant has urged that Subhash through Jagroop Singh filed a suit for permanent injunction in September, 2006 that was decided by the Additional Civil Judge (Senior Division), Maham, vide judgment and decree dated 19.12.2009. It is further argued that in the said case, Subhash was held to be a person of unsound mind, therefore, sale deed propounded by the respondent purported to be executed by Sh. Subhash, basis of the suit is no sale in the eye of law, sufficient to prove that the findings recorded by the Courts below are perverse and cannot be allowed to sustain. Another submission made by counsel is that as per entry in the municipal records, the area of the suit property is 54 sq. yds. but the respondent filed a suit in regard to more area.

I have heard counsel for the appellant, perused the paperbook particularly the judgments impugned in the appeal.

The appellant has not denied that sale deed No.2504 dated 13.12.2010 in regard to suit property bearing No.232, Ward No.1, Meham, District Rohtak, was executed by Sh. Subhash in favour of the respondent/plaintiff. The appellant and her co-defendant (her son) filed a counter-claim to challenge the said sale being null and void and not binding upon rights of the counter-claimants on the plea that Subhash being a person of unsound mind was not competent to enter into a contract for sale of the house in question.

The learned trial Court, in para 18 of the judgment has dealt with the question if the defendants have the locus to challenge the

sale deed executed by Sh. Subhash. It was held that as the defendants are not the legal heirs or successors-in-interest of Sh. Subhash, they have no *locus standi* to challenge the sale deed in question. It has further been held that Bhup Singh brother of Subhash is still alive and he has not challenged the sale deed in regard to the suit property. Counsel for the appellant is not in a position to assail these findings recorded by the trial Court whereby the appellant and her co-defendant have been held to be incompetent to challenge the sale deed in question.

This apart, counsel for the appellant during the course of arguments has made available a copy of the judgment and decreesheet passed in civil suit titled "*Subhash vs Bhoop Singh and another*" in regard to the property in question but perusal thereof does not substantiate plea of the appellant that any findings have been recorded by the trial Court in regard to Subhash being mentally unsound rendering him incompetent to enter into a contract. In this view of the matter, there is no merit in the contentions of the appellant that the respondent cannot claim possession of the suit property on the basis of sale deed.

The plea in regard to discrepancy in the area of the suit property, the same is mis-conceived and merits rejection. No such plea was raised in the written statement that the respondent has filed the suit by describing area of property in question more than its actual area.

No other point has been raised.

In view of what has been discussed hereinabove, neither

the appellant can point out any error or illegality in the concurrent findings of the Courts nor any question of law much less a substantial one arises for adjudication in the regular second appeal. As a result, the appeal fails and is dismissed *in limine*. No order as to costs.

(REKHA MITTAL)
JUDGE

29.03.2016
yakub