

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

RSA-5825 of 2015 (O&M)

Date of decision: 06.05.2016

Pemila @ Pimmi and another

...Appellants

Versus

Sunil Kapoor

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashok Gupta, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

The plaintiff/respondent filed a suit for permanent injunction. The trial Court vide judgment and decree dated 12.09.2013, decreed the suit. The counter claim filed by the defendants was dismissed.

2. Aggrieved against the findings of trial Court, the defendants filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 11.08.2015.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellants-defendants.

4. It is contended that both the Courts below have erred while deciding the issue in favour of the plaintiff/respondent. The judgment and decree dated 29.07.1995 is a collusive and fraudulent decree which does not affect the right, title or interest of the appellants-defendants over the suit property because neither appellant No.1, her sister or any legal heirs of father of appellant No.1 were impleaded in that suit. The appellant No.1, along with her mother and father were owners in possession of the house in question i.e. H.No.782, situated in Kishanpura, Panipat. After the death of parents of appellant No.1, she (appellant No.1) and her sister Preeti are joint owners in possession of the house in question. Appellant No.1 is in continuous possession of the house in question and as such, the respondent have no right of ownership in the said house and the said decree dated 29.07.1995 is not binding upon the appellants. The learned counsel further contends that both the Courts below ought to have examined the issue of validity of the judgment and decree dated 29.07.1995 with a great detail and caution especially when the plaintiff's title solely rest upon the said

decree and further failed to appreciate that a decree for possession cannot be passed in a suit for injunction especially when the title of the plaintiff/respondent was under cloud and the possession was admittedly with the appellants. He further submits that findings of both the Courts below are contrary to the pleadings and material on record and the same deserved to be set aside.

5. Heard, the learned counsel and perused the record.

6. The case of the appellants is that they are in continuous possession over the house in question and the respondent has no right, title or interest over the same. Earlier the parents of appellant No.1 were residing in the property in dispute and after their death, appellant No.1 along with her sister are in possession of the house. The suit of the plaintiff/respondent is that the house in question was illegally locked by the appellants after the death of Smt. Nirmal Kapoor, mother of appellant No.1, who was residing in the house in question as a licensee. She died on 16.09.2007 and after her death, the licence stood terminated and the plaintiff/respondent became owner in possession of the house in question on the basis of judgment and decree dated 29.07.1995, which is stated

to be result of fraudulent act as per the case of the appellants.

The appellants have taken the plea that they have become owner of the disputed property by way of adverse possession as earlier their predecessors-in-interest were in possession of the suit property and after their death, the appellants are in interrupted and continuous possession of the suit property. In support of their claim, the appellants have produced documents Ex.C2 to Ex.C22, which does not establish their right over the suit property as no house number was mentioned in those documents.

Once the respondent has duly proved his ownership on the basis of judgment and decree 29.07.1995, then the onus is shifted upon the appellants to prove their adverse possession or that the said decree dated 29.07.1995 was a collusive and fraudulent decree but no such material has been produced on record in support of their assertions. The appellants have failed to establish that as to on which date and how they or their predecessors-in-interest came in possession of the suit property.

The argument of learned counsel that appellant No.1 or her sister were not impleaded in the earlier suit, so the judgment and decree dated 29.07.1995, is not binding on them, is not tenable as the defendant in the suit was only the owner of the house in

question and there was no necessity to implead the appellant No.1 or her sister as a party. Thus, both the Courts below have rightly directed the appellants to vacate the house in question.

7. Keeping in view the above, this Court finds no merit in the instant appeal and this Court concurs with the observations of both the Courts below. There is no illegality or perversity in the impugned judgments and decrees passed by the Courts below. No substantial question of law arises for consideration. Hence, no interference is called for.

Dismissed.

06.05.2016

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(JITENDRA CHAUHAN)
JUDGE