

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4302 of 2014 (O&M)
Date of Decision : 05.12.2016

Rajinder Kaur

....Appellant

Versus

Municipal Council, Kotkapura

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Abhinav Jain, Advocate
for Mr. N.S. Wahniwal, Advocate
for the appellant.

Surinder Gupta, J.

This is second appeal filed by Rajinder Kaur against concurrent judgments and decree of Courts below whereby suit filed by her seeking relief of permanent injunction restraining the defendant from stopping plaintiff-appellant from raising construction of house over the property bearing M.C. No. B-III-382/1, situated behind Sohar Petrol Pump, Mohalla Bazigar, Kotkapura, *Tehsil* and District Faridkot was dismissed.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. Plaintiff has alleged that she on getting the site plan sanctioned started construction of house over the plot in question, which was obstructed by the defendant, hence this suit.

4. The defendant contested claim of plaintiff *inter alia* pleading that site plan was got sanctioned by plaintiff by misleading and playing fraud with the defendant in order to grab the public property. Earlier Mukhtiar Singh father-in-law of plaintiff filed Civil Suit No. 89 dated 14.02.1991 titled 'Mukhtiar Singh vs. M.C. Kotkapura' seeking the relief of

permanent injunction regarding the same property, which was dismissed and a finding was recorded therein that Mukhtiar Singh was not owner of the suit property. Appeal filed by Mukhtiar Singh was also dismissed vide judgment and decree dated 15.09.1993 by Additional District Judge, Faridkot and RSA No. 3167 of 1994 was dismissed by this Court on 09.03.1995. Mukhtiar Singh again started litigation with the defendant for the same property but failed and after his death his son Darshan Singh, husband of plaintiff cunningly got changed his name in the assessment register by concealing the above said litigation and then executed a sale deed dated 07.02.2007 in favour of his wife. The site plan on the basis of sale deed in favour of plaintiff was initially approved but later on cancelled on coming to know that plaintiff is out to grab the public property by raising construction as per site plan.

5. Suit of plaintiff was dismissed by Civil Judge (Senior Division), Faridkot and appeal filed by her met the same fate.

6. I have heard learned counsel for the appellant and have perused the paper-book with his assistance.

7. Relying on the observations of this Court in case of **Mai Dayal (deceased) by LRs vs. Khushi Ram (deceased) by LRs, 2001 (1) PLJ 484**, learned counsel for the appellant has argued that the decree for injunction has been wrongly denied by Courts below despite the fact that plaintiff is in possession of the suit property. He has argued that the suit property was purchased by plaintiff and thereafter, she applied with Municipal Council, Kotkapura seeking sanction of site plan for raising construction of the house. The site plan was sanctioned and it was at later stage the defendant-respondent demolished the construction raised by her and obstructed the

raising of further construction.

8. Admittedly, in the previous round of litigation between the Municipal Council, Kotkapura and Mukhtiar Singh, grandfather-in-law of plaintiff, it has been held that grandfather-in-law of plaintiff was not owner of the suit property. She derives title from Mukhtiar Singh, after whose death her husband, after getting suit property recorded in his name in municipal record, executed sale deed of same in her name. Ist Appellate Court has also taken note of the fact that plaintiff concealed the earlier litigation in the plaint and when this fact was pleaded by the respondent in written statement, she avoided to file any replication. Observations made by Ist Appellate Court to this effect as contained in para 13 of the judgment are extracted as follows:-

“13.Perusal of judgments and various other documents Ex. D4 to Ex. D11 reveals that there was long drawn litigation between Mukhtiar Singh, grand father-in-law of the plaintiff and the defendant Municipal Committee, Kotkapura, regarding the suit property. Perusal of Ex. D6 and Ex. D7, which are judgment and decree dated 15.09.1993, delivered by Shri K.S. Bhullar, the then learned Senior Sub Judge, Faridkot, reveals that Mukhtiar Singh son of Bir Singh had filed a suit for permanent injunction, to restrain the defendant Municipal Committee, Kotkapura, from demolishing or otherwise causing damage to Katcha/pacca newly constructed room, boundary wall in property bearing M.C. No. B-3/382/1, new no. B-III/489, situated on Bazigar Shaheed Bhagat Singh Road, Kotkapura. However, in the same, it was concluded by the Court that the plaintiff is not the owner of the suit property. The documents produced, did not relate to the suit property and ultimately, the suit of the plaintiff was

dismissed with costs. Against the said judgment and decree, the plaintiff (Mukhtiar Singh) had filed an appeal and the same was dismissed, vide judgment and decree dated 16.11.1994, passed by Shri J.S. Pamma, the then learned Additional District Judge, Faridkot. Certified copies of said judgment and decree are Ex. D10 and Ex. D11. Further more, said judgment and decree was challenged, before the Hon'ble High Court, by way of RSA No. 3167/94 and the same was also dismissed, vide order dated 09.03.1995, copy whereof, is Mark D. Not only the aforesaid, even Mukhtiar Singh again filed a suit, bearing no. 88 dated 22.03.1995, thereby seeking declaration against the present defendant, only to assert his ownership and possession, over the property, bearing old M.C. No. B-3/382/1 and new number B-III/489, as detailed in the headnote of the judgment. Said suit was also dismissed by Shri A.S. Katari, the then learned Additional Civil Judge (Senior Division), Faridkot, vide judgment and decree dated 09.03.1998, certified copies whereof, are Ex. D4 and Ex. D5. Therein, it was observed that since the matter has already been settled, vide judgment dated 15.09.1993, the same cannot be re-agitated again, regarding Mukhtiar Singh, to be owner in possession of the suit property. Also, it was observed that property bearing No. B-III/382/1 belongs to Mukhtiar Singh plaintiff, whereas, property No. B-III/489 belongs to Sadhu Singh, some other person and therefore, the plaintiff is not the owner of the same. As such, it was held that properties bearing No. B-III-382/1 and No. B-III/489 do not pertain to the same property, as claimed by Mukhtiar Singh and the said suit was also decided against Mukhtiar Singh.”

9. It was also proved on record that Mukhtiar Singh was not owner of the property bearing no. B-III/382/1, where he has already raised

construction. Courts below found that plaintiff had concealed the material facts regarding the previous litigation while seeking the discretionary relief of injunction and had not come to the Court with clean hands.

10. On perusal of judgments of Courts below, I find no legal or factual infirmity therein calling for any interference in this appeal. Citation referred by learned counsel for the appellant is not applicable to facts of the present case as issue in this case is not to protect possession of appellant but her act of raising construction over public property, which is neither permissible nor can be allowed.

11. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

December 05, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No