

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

RSA-5954-2016(O&M)

Date of decision: 10.1.2017

Smt. Javitri Devi

...Appellant/ plaintiff

Versus

Sanjay Kumar Wasist and others

...Respondents/defendants

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.SK Aggarwal, Advocate for the appellants

SNEH PRASHAR, J.

The present appeal is directed against the judgment and decree dated 7.9.2016 passed by the learned Additional District Judge, Faridabad affirming the findings recorded by learned trial Court vide judgment and decree dated 15.1.2013 vide which, suit of the appellant-plaintiff for declaration and permanent injunction was dismissed.

The appellant- plaintiff (hereinafter referred to as 'the plaintiff) filed a suit for permanent injunction with a consequential relief of mandatory injunction claiming that she is owner in possession of the double story residential house measuring 224 Sq. yards i.e. 56'x 36' consisting of 18 rooms, varandha, kitchen, stairs and open yard situated within 'Lal Dora' of village Tilpat District Faridabad (hereinafter referred to as 'the house'). She pleaded that she is paying house tax of the said house and had installed electric meter vide account No.DP-12/0383 but it was disconnected by Dakshin Haryana Bijli Vitran Nigal Limited due

to non-payment of electricity charges. On 4.12.2005, when she visited her house alongwith her son Vinod Kumar, she found that the defendants had dismantled the half northern portion of the house illegally though they had no right title or interest in the same. She and her son were also mercilessly beaten by the defendants. On a complaint lodged by her, a First Information Report No.291 dated 4.12.2005 was registered. Again on 30.4.2010 when she visited the house with her grand son Amit, the defendants in collusion with the local police misbehaved with them and threatened and pressurised her to withdraw the complaint. They also got installed an electric meter in the name of one Sanjay Kumar (defendant / respondent No.1) in collusion with the officials of the Electricity Department and locked the house with a chain. With the said pleadings, the plaintiff prayed for an injunctive order restraining the defendants from interfering in her peaceful ownership and possession over the house.

The respondents -defendants (hereinafter referred to as 'the defendants') contested the suit. In the joint written statement filed by them, they denied the ownership and possession of the plaintiff and submitted that the electric meter installed vide account No.DP-17-4594 is in the name of Sanjay Kumar s/o Ishwar Kumar (defendant No.1), who is paying the electricity charges against the bill raised from time to time by the Electricity Department.

On the rival submissions of the parties, the following issues were framed by learned trial Court:-

- 1.) Whether the plaintiff is entitled for decree of permanent injunction and mandatory injunction as prayed for?OPP
- 2.) Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
- 3.) Whether the suit of the plaintiff is not maintainable in the present form?OPD
- 4.) Whether the plaintiff has concealed the material facts from this Court?OPD
- 5.) Relief.

Both the parties adduced their respective evidence in support of their rival contentions.

Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, learned trial Court dismissed the suit vide impugned judgment and decree dated 15.1.2013. Against the said judgment and decree, the plaintiff- appellant preferred an appeal, which was also dismissed by learned Additional District Judge, Faridabad vide judgment dated 7.9.2016.

Feeling aggrieved, the plaintiff- appellant preferred the instant regular second appeal.

The submissions made by Mr.Kul Bhushan Sharma, Advocate representing the appellant have been considered.

As is apparent from the pleadings of the plaintiff, she claimed to be owner in possession of the house. It is a settled proposition of law that the plaintiff can succeed only on the strength of his/her own case and can take no benefit of the weakness, infirmity or lacuna in the

case of the defendant. In the instant case, two vital facts were required to be proved by the plaintiff (i) ownership and (ii) possession over the house. However, no substantive and reliable evidence could be produced by her to establish either her ownership or possession on the house.

The argument of learned counsel for the plaintiff that she had produced the receipt of 'Chulha tax' being paid in respect of the house is devoid of merit, as the 'Chulha tax' receipt is neither the document of title nor has any evidentiary value in absence of corroborative evidence to prove the ownership or possession in respect of the property concerned. It was also argued that an application under Order 41 Rule 27 of the Code of Civil Procedure for producing the additional evidence was filed by the plaintiff before learned First Appellate Court to prove the sale letter executed by one Shish Ram with the consent of his family members in favour of the plaintiff but the said application was dismissed by First Appellate Court alongwith the appeal vide the impugned judgment. The said sale letter is an important and necessary document, which would prove that the plaintiff had purchased the house from the family of Shish Ram and Satbir in the year 1997.

It is not the case of the plaintiff that value of the house is less than Rs.100/-.

As per the provision of Section 17 of the Registration Act, 1908, the property having value of more than Rs.100/- can be sold only by way of a registered document. Admittedly, the writing/ sale letter, which the plaintiff intends to produce by way of additional evidence, is

not a registered document.

Since the writing / sale letter had no evidentiary value in the eyes of law, it would have been an exercise in futility to allow the plaintiff to produce the said document as additional evidence. More importantly, the document did not find mention in the pleadings of the plaintiff. Also while writing/ sale letter was said to have been signed by Shish Ram, the plaintiff claimed that she had purchased the house in the year 1997 from Shish Ram and Satbir. In her pleadings, she alleged that she had purchased the house from one Satbir. Such being the facts, the application for additional evidence filed by the plaintiff was rightly dismissed by learned First Appellate Court.

The matter does not end here. The plaintiff not only failed to prove that she is owner of the house, but also failed to prove her possession over the same. As observed by learned First Appellate Court in para 11 of the judgment, the plaintiff during her statement on oath admitted that she alongwith her son Vinod Kumar was residing in another village. She stated that she had been residing with Vinod Kumar from the very beginning. If that was so, it was necessary for her to explain how she was in possession of the house.

It is argued by learned counsel for the plaintiff that the house was being given on rent by the plaintiff. She had been in possession through her tenant. It was not so stated in the pleadings. Also no ocular or documentary evidence was produced to prove the said fact. Rather, she pleaded that she got an electric connection installed in her

name and had been paying the electricity bill but the said factum could also not be proved by her. On the contrary, the defendants proved that the electric meter installed in the house vide account No.DP-17-4594 is in the name of Sanjay Kumar -defendant No.1. All the said facts cumulatively establish that the appellant is not in possession of the house.

In view of the above discussion, there is no merit in the present appeal filed by the defendants and also no question of law, much less substantial question of law, arises for determination in this regular second appeal. As such, the present appeal is dismissed in limine.

Since, the main appeal has been dismissed, the miscellaneous application also stands dismissed.

10.1.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No