

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

**RSA No.6001 of 2016
Date of Decision: 28.09.2017**

Agnas @ Khursaidan

.....Appellant

Vs.

Samual Boot and ors.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Deepak Arora, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

The plaintiff/appellant has come up in appeal against the judgments of the trial Court dated 24.03.2012 and lower appellate Court dated 03.11.2016, whereby, his suit for permanent injunction restraining the defendants from dispossessing the plaintiff from house has been dismissed.

The brief facts of the case are that Pheman General Missionary Society of the United Parosareen Church of Shamli America was recorded to be owner of the vast property as per revenue record in Gurdaspur including the khasra number referred in the cause title of the plaint. The property has been leased out to different lease holders by the original owner and a big colony had come into existent over the Church property. The khasra number detailed at the head note of the plaint was also leased out for a period of 99 years. Mrs.D.S.Ganda Mal wife of Shri A.S.Hakim, resident of Simla was the previous lessees of this khasra number for a period of 99 years. Mrs.D.S.Gandamal the previous lessees sold her lessee rights in favour of Major Anait Masih son of Lakha Masih resident of village Agwan Diwana, Tehsil and District Gurdaspur by way of registered sale deed dated

30.06.1983. After taking the possession, he entered into the shoes of the original lessee, the lease period of which was 99 years. He entered into possession in khara number as detailed in the suit and built residential house and plaintiff was living with him being the only daughter. After her marriage, she left with her father in his house as she was the only child of above said Anait Masih and since then the plaintiff was in possession of the house in dispute. Major Anmait Masih also executed a registered Will dated 10.04.1993 in favour of plaintiff. Defendant No.3 Umar Masih was the brother of Major Anait Masih, who was father of plaintiff and he migrated to England about 40 years back and was living there with defendants No.1 and 2 who were born in England and they never resided in the house in dispute as they were permanent resident of England. They started threatening that they would dispossess the plaintiff forcibly and illegally and hence the suit was filed claiming that paternal uncle of plaintiff settled the family dispute with the plaintiff and gave the property in dispute to the plaintiff in family settlement and also executed an affidavit and compromise agreement dated 07.04.2006 which was attested by the Executive Magistrate, Gurdaspur and on the basis of this compromise, she had withdrawn her previous suit on 31.01.2007. The defendants again extended threats and hence the suit was filed.

On notice, the defendants had filed written statements taking the principle of resjudicata admitting that plaintiff was daughter of late Sh.Anait Masih and she had been married since long with Rehmat Masish and used to live in the house of her in-laws after after her marriage. It was totally tenied that she lived with her father after the marriage. It was averred that

defendants No.1 and 2 after purchasing the vacant plot through registered

sale deed dated 11.04.1994 had constructed the house in dispute after spending huge amount and defendants who were residing in England used to occasionally visit the house in dispute. The plaintiff was looking after the house as licensee. The defendants had also filed the counter claim alleging that defendants No.1 and 2 had purchased the vacant plot through registered sale deed dated 11.04.1994 from Shri Anait Masih and plaintiff was given the constructed portion as a licensee just to look after the house to keep it neat and clean. She did not give back the possession, hence the counter claim was filed.

From the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to permanent injunction restraining the defendants from dispossessing her from the house in dispute? OPP.
3. Whether the present suit is barred by the principle of resjudicata? OPD.
4. Whether the present suit is false and frivolous and the defendants are entitled to costs of Rs.50,000/-? OPD.
5. Whether the suit is barred by limitation? OPD.
6. Whether the defendants no.1 and 2 are entitled to possession of the house shown as ABCD being owners constructed over the plot measuring 8 marlas comprised in khasra No.1372/2/2/1/5, khewat No.243 and khatoi no.335 as claimed in counter claim? OPD/.
7. Whether the counter claim filed by defendants is not maintainable? OPP.
8. Relief.

The learned trial Court decided the issues No.1,2, 6 and 7 together. After going through the evidence led by the parties, death certificate of Anait Masih was placed on record whereby he had expired on 27.12.1994 and he had showed his rights in favour of defendants No.1 and 2 vide registered sale deed dated 11.04.1994. The will Ex.P-2 dated 16.04.1993 was placed on record but it would not be extended any benefit to the plaintiff as during her lifetime he sold the property and initially the plaintiff had filed a suit Ex.D5 on 30.01.2006 in which written statement was filed Ex.D4. The suit was dismissed in default under order 9 rule 8 CPC vide Ex.D5. Hence, the suit under Order 9 Rule 8 was dismissed in default and fresh suit on the same cause of action was barred as suit was not maintainable. Simultaneously, in the counter claim, defendant had proved the signatures of his father on the sale deed Ex.D1 and entry in the registered as Ex.D6. This record had also brought by DW-3, Registration Clerk, DW-3 with respect to sale deed dated 11.04.1994 which was registered in the office of by Dastawej number No.183, Bhai No. on 11.04.1994 as Ex.D-2. Since the sale deed was duly proved and the suit of the plaintiff was dismissed and counter claim of the defendants were decreed with costs, they were held entitled to get possession of the house shown as ABCD measuring 8 marlas and plaintiff was directed to handover the vacant possession of the house within two months of the date of passing of the judgment and the registered sale deed dated 11.04.1991 had washed away.

After hearing counsel for the petitioner, the suit of the plaintiff was rightly dismissed by the trial Court as during the life time, father of plaintiff had executed sale deed in favour of defendants No.1 and 2 vide

registered sale deed dated 11.04.1994 and execution of the sale deed has been registered by summoning the witness DW-3 from the office of Registration Clerk.

Learned appellate Court had also dismissed the first appeal on the same ground.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warrant interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

28.09.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No