

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

**Regular Second Appeal No.399 of 2017 (O&M)
Date of decision: 14.11.2017**

Vidya Devi

.....Appellant

Versus

Satinder Kumar Kathuria and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sumeet Jain, Advocate,
for the appellant.

Mr. Kanwaljit Singh, Senior Advocate,
with Mr. Balsher Singh, Advocate,
for caveator-respondent No.4.

Ritu Bahri, J.

CM No.864-C of 2017

In view of the averments mentioned in the application, same is allowed and delay of 02 days in filing of the appeal is condoned.

RSA No.399 of 2017

This appeal has been directed against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Addl. Civil Judge (Senior Division), Ellenabad and the Additional District Judge, Sirsa, whereby suit filed by the plaintiff-appellant for declaration and possession, has been dismissed.

Vidya Devi-plaintiff (appellant herein) filed a suit for declaration and possession alleging that she had purchased the house in dispute, as described in the head note of the plaint, from defendant No.1-Satinder Kumar Kathuria vide sale deed dated 27.12.1982, registered in the office of Sub Registrar, Ellenabad at Sr. No.916 dated 28.12.1982 and got possession

thereof. Before purchasing the house, she had made numerous enquiries regarding valid title of defendant No.1 from the municipal records and other neighbourers. On the basis of aforesaid sale deed, entries regarding the plaintiff showing her as owner in possession of the purchased house were made in the municipal and Government records. The Municipal House Tax Unit number of the house in question was B-10/3821. After purchasing the house, plaintiff and her family members shifted to Dhuri (Punjab) and this house was given under the charge of Sh. Geeta Ram, who continued to live in Ellenabad. Subsequently, plaintiff appointed him (Sh. Geeta Ram) as her General Power of Attorney vide registered GPA dated 20.11.1985. Thereafter, Sh. Geeta Ram started living in the said house after getting consent from the plaintiff. No rent was ever demanded from Geeta Ram by the plaintiff or her husband. Geeta Ram and his family members were living in this house as licensee. After the death of Geeta Ram, his widow and son (defendant Nos. 2 and 3) had occupied the said house as licensee under the plaintiff. In the last week of December, 2006, plaintiff visited Elenabad with a view to spend sometime in the house owned by her. However, defendant No.4 was found in possession of the house owned by her. Thereafter, she came to know that defendant Nos.2 and 3 had handed over possession of the said house to defendant No.4 without giving any intimation to the plaintiff. As per plaintiff, defendant Nos.2 and 3 had no legal right or authority to had over possession of the house in dispute to defendant No.4. Plaintiff being lawful owner of the house, is legally entitled to get possession from defendant No.4. It is alleged that defendant Nos.2 and 3, in a mischievous manner, had delivered possession of the house in dispute to defendant No.4. Plaintiff had requested him to vacate the same, but he flatly refused to do so.

Hence, the suit.

Upon notice, defendant-respondent Nos.2 and 3 filed joint written statement taking preliminary objections with regard to maintainability; locus standi and cause of action to file the suit. On merits, it was stated that Tara Chand was owner in possession of the suit property and he had sold the same to defendant No.4 being owner of the same. Geeta Ram was residing in the above mentioned house bearing municipal unit No.10/3821 as tenant under Tara Chand. Defendant Nos.2 and 3 were staying in the house of Tara Chand after the death of Geeta Ram, which took place on 18.03.1997. After purchasing the house, defendant No.4 approached Sudesh Kumar (now deceased) to enhance the rent, but the latter was not in a position to pay the enhanced rent, so he opted to vacate the premises and thereafter, shifted to Sirsa.

Defendant No.4 filed a separate written statement, stating therein that defendant No.1 was not the owner in possession of the house in dispute. However, lease deed No.126 dated 07.04.1978 was executed by earlier owner namely Tara Chand in favour of defendant No.1. Defendant No.1 further sub-leased the area in favour of Rahul Setia son of Sansar Bhushan Setia vide registered deed No.1075 dated 20.05.1981. Previous owner Tara Chand had sold the house in dispute to defendant No.4 vide sale deed No.2276 dated 16.11.2006 and since then, he is residing therein and running his business. Electric & water connections have been taken by him in his name. He is also paying house tax to the Municipal Committee. Since house No.3821 was never owned and possessed by defendant No.1, he was not competent to sell the same to the plaintiff or anyone else. The sale deed in favour of plaintiff has no legal authenticity and value.

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

1. Whether the plaintiff is entitled for a decree of declaration, as alleged? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether plaintiff has concealed the true and material facts from the this Court? OPD
4. Whether plaintiff has got no cause of action and locus standi to file the present suit? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act & conduct? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
7. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD
8. Relief.

After going through the evidence led by both the parties, trial Court dealt with the sale deed Ex.P13, which was the only document produced by the plaintiff showing the ownership of Satinder Kumar Kathuria-defendant No.1. This sale deed pertains to the revenue estate of Dhani Jatan and the plot purchased by Satinder Kumar Kathuria (defendant No.1) bears Sq. No.4, Killa No.8/8/4. Thus, Satinder Kumar Kathuria was owner of plot bearing No. 8/4/4, situated at village Dhani Jatan. Ex.P1 was the sale deed executed in favour of Vidya Devi-plaintiff (appellant herein) When Satinder Kumar Kathuria purchased the property, it was a *gair mumkin* Plot bearing No.4/8/8/4 (0-6 Marla). However, in the sale deed, vide which the house was sold to Vidya Devi, its description was shown to be within Municipal Committee, Ellenabad. It is shown to be a constructed house measuring 25' x 25'. From this position, the controversy had started. The identity of suit property came under dispute. By way of sale deed dated 27.12.1982, plaintiff is putting her claim over a house measuring 25' x 65' (180 Sq. yard) and as per defendant No.4, he is in possession of H.No.3821,

which falls within Municipal Committee and is situated on Muraba No. 4, Killa No.8/8/5, measuring 5 Marlas. Sale deed in favour of Satinder Kumar Kathuria was showing Khasra No.4/8/8/4 and that of defendant No.4 is showing Khasra No.8/8/5. Tara Chand was recorded as owner of Sq. No.4, Killa No.8/8/5. As per defendant No.4, he has purchased the house in dispute after verifying the title of Tara Chand from the sale deed Ex.D1 and also revenue record. Tara Chand had purchased the suit property from Birbal Ram etc. vide sale deed No.126 dated 07.04.1978 Ex.D1. Revenue record Ex.D17 to Ex.D21 also reveals that Tara Chand was owner of Sq. No.4, Killa No.8/8/5. Sale deed No.93 dated 09.04.1975 Ex.P11 referred to by the plaintiff is of no help to her, as the burden to prove title of the suit property was lying on her. Even if, sale deed Ex.P11, vide which Tara Chand had sold the suit property to one Kewal Krishan, is taken to be true, the plaintiff had to prove the fact with regard to revenue estate of Dhani Jatan, where she was claiming that the suit property was situated within Lal Lakir (Abadi Deh) and she had purchased the same from Satinder Kumar Kathuria.

From the entire evidence and the controversy, trial Court came to a conclusion that Tara Chand had executed one lease deed No.126 dated 07.04.1978 in favour of Satinder Kumar Kathuria-defendant No.1, who further sub leased the area in favour of Rahul Setia son of Sansar Bhushan Setia vide registered lease deed No.1075 dated 20.05.1981. Thus, the area in question was never owned by Satinder Kumar Kathuria and he was not the owner of dispute property. He was merely a lease holder and being a lease holder, he had executed a sale deed in favour of the plaintiff. Hence, the title and ownership of plaintiff had become defective. Accordingly, issue No.1 was decided against the plaintiff

and in favour of the defendants.

During the proceedings of trial, Satinder Kumar Kathuria was given up by the plaintiff on the ground that his correct address was not known to her. Trial Court has observed that he should not have been given up by the plaintiff because she was making her claim on the basis of sale deed executed by him (Satinder Kumar Kathuria) in her favour and he was an essential witness for her. Keeping in view lease deed Ex.D2 executed by Tara Chand in favour of Satinder Kumar Kathuria, title of Vidya Devi-appellant became defective as Satinder Kumar Kathuria was not owner of the suit property, rather he was merely a lessee. Therefore, he could not execute sale deed in favour of the plaintiff-appellant. Accordingly, issue Nos. 3 and 4 were decided in favour of the defendants and against the plaintiff.

Further, the suit of plaintiff was held to be not maintainable as she failed to prove her title over the suit property. Ultimately, the suit was dismissed by the trial Court.

On appeal, findings returned by the trial Court have been affirmed by the lower appellate Court. While dismissing appeal, the lower appellate Court has observed that ownership of Tara Chand over the land comprised in Rect. No.4, Killa No.8/8/5 (5-0) was evidence from Jamabandis Ex.D17 to Ex.D21. Plaintiff-appellant while appearing as PW-1, in his examination-in-chief, had deposed that when they purchased the house in dispute, it was situated within the *lal lakir (abadi deh)*, Ellenabad. But Ex.P13, vide which vendor of appellant-plaintiff became owner, revealed that Satinder Kumar had purchased land measuring 0 Kanal 6 Marlas comprised in Rect. No.4, Killa No.8/8/4. Land mentioned in Ex.P13 was not akin to land mentioned in sale deed dated 28.12.1982 Ex.P1. So, plaintiff-appellant has failed to

plaintiff had further admitted that Tara Chand had sold out house in question to respondent No.4-Jai Singh and she had not purchased any land from Tara Chand son of Pirthi. She had further admitted that Jai Singh had got mutated the land in his favour, which he had purchased from Tara Chand. The house, which was purchased by Jai Singh, was earlier in possession of defendant Nos. 2 and 3. Hence, the plaintiff has miserably failed to prove that she has purchased the property comprised in Rect. No.4, Khasra No.8/8/5 (0-5). Therefore, she could not be declared as owner in possession of the house in question by virtue of sale deed dated 28.12.1982 Ex.P1.

In the present case, sale deed dated 28.12.1982 Ex.P1 was executed in favour of plaintiff-appellant by Satinder Kumar Kathuria, who himself was a lessee of Tara Chand and thus, could not pass a better title to Vidya Devi-plaintiff. Therefore, both the Courts below have returned a correct finding that plaintiff-Vidya Devi was not able to prove that she has purchased the property in dispute comprised in Rect. No.4, Khasra No.8/8/5 (0-5) vide sale deed Ex.P1, which was in possession of defendant No.4 and that she had purchased the same .

Hence, after going through the impugned judgments passed by the Courts below, no illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

14.11.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No