

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

RSA No. 2233 of 2016 (O&M)

Date of Decision:-May 7, 2018

Kavita

.....Appellant

V/S

Yogender Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present : None

AMIT RAWAL J. (Oral)

CM No. 5839-C of 2016

In view of averments made in the application, delay of 24 days in refiling the present appeal is condoned.

Application stands allowed.

RSA No. 2233 of 2016 (O&M)

There is no representation on behalf of the appellant-defendant. The appeal is of the year 2016 pending for motion hearing. The appellant/defendant is in the regular second appeal against the concurrent finding of fact whereby suit for permanent injunction restraining appellant-defendant from interfering in the possession of House No. 1357, Sector 15, Part-II, Gurgaon has been decreed in favour of the respondent-plaintiff. Respondent-plaintiff filed aforementioned suit seeking injunction against the appellant-defendant on the premise that Plot No. 1357, Sector 15, Part II, Gurgaon was purchased by Parkashwati widow of Sh. Sukhbir Singh and

On the plot measuring 171 Sq. mtrs. a three storeyed house was constructed. On demise of Prakashwati (mother of plaintiffs No. 1 and 2), her share was inherited by her five sons and a daughter in equal shares. In a family settlement effected orally amongst the brothers and sister, the house fell into the share of plaintiffs No. 1 and 2. Satender Dhaka- the husband of the defendant took cash in lieu of his share in the plot and property and booked a flat in Valley View Estate, Faridabad. Sale deed dated 01.12.2006 in respect of Flat No. 406, Tower-I, was executed in his favour, his wife Kavita- defendant and since then they have been residing in the flat. The details of the payment made to the developer had been reflected in the plaint. Shri S.S.Dhaka had given an affidavit on 08.04.2008 that he had no share in the house as had been residing in Flat No. 406, Tower No. 1, Value View Estate, Gurgaon but out of greed wanted to interfere into peaceful possession, therefore, cause of action arose to file the suit.

The aforementioned suit was contested by appellant-defendant by raising preliminary objections qua locus standi, maintainability, cause of action, bad for mis-joinder of parties. On merit, it was stated that Plot No. 1357 was purchased in the name of Parkashwati widow of Sukhbir Singh and one male son being karta namely Virender Singh. The property was a joint hindu family property/coparcenary property and therefore, the status of the defendant in the suit property was of a co-sharer and co-owner. The family settlement was allegedly denied and so the factum of Satender Dhaka being resided in flat of Valley View Estate, Faridabad. The cheque allegedly given by the plaintiff was an attempt to create the evidence by playing fraud upon the defendant. Rather the defendant used to come in the house and had been residing there, thus opposed the grant of injunction.

The trial court on the basis of pleadings framed as many as seven issues. The plaintiff-Surender Singh while examining himself as PW 1, placed on record three documents Ex. P1 to P3 i.e copy of sale deed, copy of sale deed/conveyance deed and copy of affidavit whereby the appellant-defendant examined herself as DW1 and Shri Rajesh Kumar as DW2 and brought on record as Mark DX, DY, DZ, DZ1 and Ex.DW2/A copy of list of Namawali 2009.

The trial court on the basis of aforementioned evidence found that the appellant-defendant was not in a possession whereas respondent-plaintiff had been able to prove the same and granted the injunction. The appeal filed before the lower appellate court was also dismissed.

As per the memorandum of appeal it has emerged that judgment rendered by the courts below is not sustainable in the eyes of law and suffer from illegality and perversity as gravely erred in considering the affidavit of P3 regarding the family settlement which is a photostat document which did not have any value in the eyes of law. Neither the execution of the alleged affidavit nor Satender Dhaka was ever produced in the witness box. The onus was on the respondent-plaintiff and not on appellant-defendant. The Courts below arrived at erroneous conclusion that a party who is not in a possession cannot claim the injunction and particularly against a co-sharer. The courts below have gravely erred in not considering the relinquishment right of the husband of appellant-defendant.

I have gone through the paper book and of the view that there is no merit in the memorandum of appeal, for, the Courts below categorically found that respondent-plaintiff had been in possession, as the appellant-defendant in cross-examination admitted possession of the plaintiff over the

suit property. The person who is in continuous and long possession can always protect possession in view of the law laid down in Hon'ble Supreme Court in *Rame Gowda (D) by LRs vs. M. Varadappa Naidu (D) by LRs and another* (2004)1 SCC 769.

The defendant admitted that she has not been living with her husband Satender Dhaka from June 2008 and various litigations are pending between the appellant/defendant and her husband. In view of such relationship she could not explain as to in what capacity asserted right in the suit property. On the other hand, the plaintiffs' witness proved that Satender Dhaka had already taken share in the suit property and had purchased the property in the Valley View Estate.

All these factors have been taken care of by the courts below and since it was dispute between husband and wife, the wife tried to interfere into possession of the relatives of her husband, which gave cause of action to file suit. The findings of fact and law arrived at by the Courts below do not suffer from illegality and perversity, much less no question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

May 7, 2018

Rajeev Purohit

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned Yes

Whether reportable No