

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

RSA No.139 of 2015(O&M)

Date of decision: 23.4.2018

Satya RaniAppellant

VERSUS

Santosh KumariRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Gill, Advocate for the appellant.

Mr. Vijay Lath, Advocate for the respondent.

REKHA MITTAL, J.

CM No.405-C of 2015

Prayer in this application is for condoning delay of 1 day in re-filing the appeal.

Heard.

In view of averments made in the application, the same is allowed. Delay of 1 day in re-filing the appeal stands condoned.

Disposed of accordingly.

CM No.406-C of 2015

Prayer in this application is for condoning delay of 94 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Satya Rani- appellant, the application is allowed. Delay of 94 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA No.139 of 2015

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction filed by the appellant/plaintiff was dismissed by the trial Court vide judgment and decree dated 14.01.2013 and the appeal filed by the plaintiff remained unsuccessful before the Court of District Judge, Jalandhar.

The facts relevant for disposal of the present appeal are that the appellant filed the suit for permanent injunction restraining the respondent/defendant from dispossessing her from dilapidated house, detailed in head-note of the plaint. It is averred that the suit property was owned by Dhanu Ram, her father in law, who died in the year 1976 leaving possession of the suit house with his son Sohan Lal and his wife. Sohan Lal died in 1989 leaving possession of the house with the appellant. Respondent/defendant never lived in the suit house and presently the suit property is under the lock of the appellant. On 17.04.2011, respondent along with unknown persons tried to forcibly break open the locks and dispossess the appellant.

Respondent/defendant filed the written statement raising preliminary objections inter alia maintainability, estoppel, locus standi, mis-joinder and non-joinder of parties etc. It is alleged that suit property was originally owned and possessed by Smt. Banti Devi wife of Dhanu Ram and she executed Will in her favour on 17.08.1989 and gave possession to the respondent.

The trial Court framed following issues for determination:-

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has not come to the Court with clean hands? OPD
4. Whether the plaintiff is estopped by her own act, conducts and admissions from filing the present suit? OPD
5. Whether plaintiff has got no locus standi to file the present suit? OPD
6. Whether the suit of plaintiff is bad for misjoinder and nonjoinder of necessary parties? OPD
7. Whether the suit of plaintiff is without any cause of action? OPD
8. Whether the site plan is incorrect as per the spot? OPD
9. Whether Banti Devi wife of Dhanu Ram executed a will regarding the property in dispute on 17.08.1989 in favour of defendant? OPD.
10. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. The appellant appeared in the witness box and tendered documents Ex.P1 to P13. She also examined Jaswinder Kumar PW-2 and Madan Lal PW-3.

To rebut evidence of the appellant, respondent appeared in the witness box and tendered documents Ex.D1 and D2.

The trial Court answered issue no.1 against the appellant and as a result, suit filed by the appellant was dismissed. A relevant extract from para 16 of judgment of the trial Court reads as follows:-

.. ...plaintiff has claimed the relief of permanent injunction against the defendant merely on the ground of possession over the suit property. The possession of plaintiff has been admitted by the defendant while appearing as DW-1 in her cross examination. The plaint filed by plaintiff is silent qua any other legal heirs of Sh. Dhanu Ram. Even if there is no other legal heir of Sh. Dhanu Ram, as per the case of plaintiff and evidence on record, the defendant has legally got an equal share in the suit property like plaintiff, even though, defendant is not in physical possession of suit property. The suit property is in dilapidated condition as is clear from the headnote of plaintiff itself and is present lying vacated. Both, plaintiff as well as defendant are living in their houses built by them separately. PW-1 plaintiff in her cross examination has admitted it to be correct that she has filed the present suit with the motive to take possession of suit property.”

The Appellate Court, in view of observations recorded in paras 14 to 16, proceeded to affirm findings of the trial Court and eventually dismissed the appeal.

Counsel for the appellant/plaintiff would urge that as the trial Court has clearly held that possession of the appellant has been admitted by the respondent in her cross examination, there was no reason for the Court to dismiss the suit even if the respondent is one of the co-sharers in the suit house. It is further argued that a co-sharer out of possession of joint land cannot disturb exclusive possession of another co-sharer except by filing a suit for partition and recovering possession of his/her share in

accordance with law. It is further argued that the Appellate Court failed to take note that a co-sharer in exclusive possession of joint land has the right to get injunction against forcible and illegal dispossession. The last submission made by counsel is that civil rights are to be decided on the basis of balance of probabilities, therefore, a single sentence in cross examination of the appellant that she has filed the suit with the motive to take possession should not be fatal to the case set up by the appellant.

Counsel representing the respondent, on the other hand, has supported the judgments passed by the Courts with the submission that as the suit property is in dilapidated condition and the appellant is admittedly not maintaining her residence therein, no injunction can be granted against the respondent, admittedly one of the co-owners of the suit property being daughter in law of Sh. Dhanu Ram and widow of Sh. Jagat Ram son of Dhannu Ram.

I have heard counsel for the parties, perused the paper-book particularly the judgments passed by the Courts and records of the trial Court.

Indisputably, the suit property is in dilapidated condition and is situated in village Raipur Rasulpur, District Jalandhar. It was originally owned by Sh. Dhanu Ram, father in law of the parties namely Satya Rani and Santosh Kumari as Satya Rani was married to Sh. Sohan Lal and Santosh Kumari to Jagat Ram, sons of Dhanu Ram (since deceased). The appellant has claimed permanent injunction on the premise that she is in possession of the suit property and the respondent is not entitled to disturb her possession forcibly and illegally.

As the appellant has filed the simplicitor suit for injunction against forcible dispossession, the crucial question that requires

determination is, whether the appellant is in exclusive possession of the suit property, thus, entitled to injunction against forcible dispossession by another co-owner of the property in question.

Satya Rani- appellant is resident of Raipur Rasulpur, the village in which the property in question is situated. On the other hand, the respondent is resident of Jalandhar since the year 1989 when her husband Sh. Jagat Ram passed away. Satya Rani has not claimed that she is using the suit property for the purpose of her residence. She has raised a specific plea that suit property is in dilapidated condition. In her cross examination, she would admit that she resides in another place at village Raipur Rasulpur. A relevant extract from her cross examination reads thus:-

"It is incorrect to suggest that the defendant Santosh Kumari hand (sic) over the suit property to me for look after."

In the next line, she admitted it correct that she filed the present suit with the motive to take possession of the property.

Santosh Kumari – respondent tendered into evidence her affidavit Ex.DW1/A by way of examination in chief. A relevant extract therefrom is quoted for ready reference:-

"At present the suit property is vacant plot and the malba was removed by the plaintiff as I never remained in the suit property. I have been living in Jalandhar after the death of my husband Jagat Ram. My husband was (sic) died in the year 1989. It is incorrect to suggest that lock to the suit property is of the plaintiff. Voluntarily says that the plaintiff putting (sic) her lock in the suit property after breaking my lock. I have made complaint of (sic) Panchayat regarding the breaking of

my lock. I have not placed on record any copy of the complaint which I made to the panchayat. Photograph Ex.P8 is of the suit property and plaintiff is standing outside the suit property while locking the suit house. Photograph Ex.P10 and Ex.11 are not of suit property. However, the defendant failed to identify the person standing in the photographs of Ex.P9 to P11. However, I identify the suit property and lock to the suit property as per photograph Ex.P12 and Ex.P13. At present the property in question is standing in my name, confronted with Ex.P1 where the property is still standing in the name of Dhanu father in law of the parties.”

The aforesaid extract from cross examination of the appellant by counsel for the respondent is an admission qua plea of appellant that she is in possession of the suit property. The respondent has admitted that the suit property is under the lock of the appellant. Plea of the respondent that earlier the suit property was under her lock which was broken by the appellant does not get substantiated from any materials on record. During the course of hearing, counsel for the respondent has not challenged correctness of the photographs marked as exhibit P8. The respondent has admitted that photograph Ex.P8 is of the suit property and appellant is standing outside the suit property while locking the dilapidated house. The photograph Ex.P8 falsifies statement of the respondent that suit property is a vacant plot. Rather, the suit property is in dilapidated condition but walls and door are in existence which is under lock of the appellant Satya Rani. The trial Court has also accepted plea of the appellant that she is in possession of the suit property as admitted by the respondent. No sooner the appellant is proved to be in exclusive possession of the suit property,

respondent cannot be allowed to interfere in her possession except in due course of law. Both the Courts have committed a serious error rather perversity while appreciating the evidence on record as well as settled position in law. The Appellate Court has not disturbed findings of the trial Court to the effect that the appellant is admitted to be in possession of the suit property but still misdirected itself to reject her claim against forcible and illegal dispossession. There cannot be dispute that a co-owner in exclusive possession of joint property cannot be dispossessed except in due course of law. In this view of the matter, findings recorded by the Courts on issue No.1 cannot be allowed to sustain and liable to be set aside. As a consequence, the appellant is entitled to permanent injunction restraining the respondent from recovering possession of the suit property illegally or forcibly, except in due course of law.

No other point has been raised.

For the foregoing reasons, the appeal is allowed with costs. Judgments and decrees passed by the Courts are set aside. Suit filed by the appellant/plaintiff is decreed to the effect that the respondent is restrained from dispossessing the appellant from the house in question forcibly and illegally, except in due course of law.

APRIL 23, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no