

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

RSA-25-2014 (O&M)

Date of decision : 5.4.2018

Nita

..... Appellant

Versus

Sarla Devi through her LRs

Raj Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr..Rajiv Joshi, Advocate for the appellant.

Mr. Amit Jaswal, Advocate for the respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present regular second appeal is the order 29.11.2013 passed by learned Additional District Judge, Ambala whereby the judgment and decree dated 17.10.2011 passed by learned Civil Judge, Junior Division, Ambala dismissing the suit, was set aside and suit filed by the plaintiff-Sarla Devi was decreed with costs to the effect that plaintiff is the owner and in possession of House No. 87 -C, Near Telephone Exchange, Behind B.D., Flour Mill, Ambala Cantt. It was further held that plaintiff is entitled to get the possession of the property in question. Defendant-Nita was directed to hand over the vacant possession of the house in question within two months from the date of passing the judgment failing which plaintiff-Sarla Devi was held entitled to get the possession of the house in question through the process of the Court.

I have heard learned counsel for the parties and perused the case file.

It comes out that that plaintiff- Sarla Devi who was aged about 80 years and mother-in-law of defendant-Nita filed a suit for mandatory injunction against defendant-Nita for directing her to deliver the vacant possession of the House No. 87-C, Gandhi Nagar, near telephone exchange, behind B.D. Flour Mill, Ambala Cantt. Plaintiff also claimed recovery of Rs. 2500/- as compensation on account of use and occupation of the house.

It comes out that defendant-Nita is the wife of Raj Kumar who is one of the sons of plaintiff-Sarla Devi. Originally, the house was owned to the extent of $\frac{1}{2}$ share by the plaintiff-Sarla Devi and $\frac{1}{2}$ share by Raj Kumar—husband of defendant-Nita. Vide registered gift deed dated 9.6.2008, Raj Kumar gifted his $\frac{1}{2}$ share in favour of his mother-Sarla Devi and she claimed that she has allowed her son and defendant to live in the house as a licensee and now she has terminated the license.

Plaintiff-Sarla Devi had earlier filed a suit for permanent injunction on 25.4.2007 restraining the defendant from dispossessing her in which status quo was granted vide order dated 1.5.2007 but it is claimed that even then plaintiff was dispossessed with the help of some henchmen by causing injuries to the plaintiff-Sarla Devi. She was also got challaned by defendant-Nita along with her son and handicapped daughter under Sections 107 and 151 of the Criminal Procedure Code.

Defendant in the written statement had taken the stand that the estate was left by her father-in-law and husband of the plaintiff-Sarla Devi. She further stated that husband of defendant namely Raj Kumar is the co-owner in the said property and she is legally wedded wife of Raj Kumar son of the plaintiff-Sarla Devi. She was not aware about any registered gift deed in favour of the plaintiff.

It is further stated that Raj Kumar-husband of defendant- Nita wanted to create ground for divorce and eject her from the house.

From the pleadings following issues were framed: -

1. *Whether the plaintiff is entitled to suit of mandatory injunction as prayed for? OPP.*
2. *Whether the suit is not maintainable? OPD*
3. *Whether plaintiff has no locus standi? OPD*
4. *Whether the present suit is likely to be stayed as earlier suit on the same ground is also pending? OPD*
5. *Relief.*

Learned trial Court after going through the evidence dismissed the suit. The decree was reversed in appeal.

It comes out that admittedly earlier Raj Kumar-husband of the defendant was co-owner to the extent of $\frac{1}{2}$ share in the suit property. As per the plaint itself, Raj Kumar along with his wife was living in the said house apparently as co-sharer, they had two children also. It is also evident that Raj Kumar developed bitter relations with his wife and he filed a divorce petition which was also dismissed. During the cross-examination, plaintiff being elderly lady did not appear and produced her power of attorney i.e. Sushma Rani (her daughter) to appear on her behalf. She has not disputed that a divorce petition filed by her brother-Raj Kumar has been dismissed. She denied that gift deed was got executed after the divorce petition was filed. She claimed that rent of the house is Rs. 2500-3000/- per month. A perusal of the gift deed dated 9.6.2008 (Ex. P-2) read with the statement of Sushma Rani show that the original registered gift deed is with her and

She produced the photocopy thereof which was exhibited as P-2. Therefore, learned trial Court erred in holding that the original registered gift deed was not produced. Therefore cannot be relied upon. Even the cross-examination of Sushma Rani shows that gift deed was not denied. It was suggested that gift deed was got executed to eject the defendant and children from the house, though in the same breath, it is stated that it is fabricated. Since gift deed is a registered document and is not proved to be fabricated, therefore, it has to be relied upon to hold that Raj Kumar vide gift deed dated 9.6.2008 (Annexure P-2) transferred his $\frac{1}{2}$ share in the disputed property in favour of his mother-Sara Devi/plaintiff. Incidentally, the suit was filed four months later i.e. on 20.10.2008 for mandatory injunction and before that a suit for injunction was filed on 25.4.2007 which was dismissed in default. Therefore, it is apparent that after the filing of the first suit for injunction, gift deed was executed to transfer $\frac{1}{2}$ share of the husband of defendant in favour of plaintiff i.e. mother-in-law of defendant. The purpose is apparent. The purpose of the gift deed was to make the mother of Raj Kumar as sole owner so as to seek possession of the entire property.

Now during the pendency of the first appeal, another development has taken place. Sarla Devi mother of Raj Kumar- husband of defendant-Nita has expired on 15.3.2013 and the disputed property has been succeeded by her five legal heirs namely Raj Kumar-husband of defendant-Nita; Sushma; Madhu; Neeraj Bala and Bhupinder. In this way, Raj Kumar has now $\frac{1}{5}^{\text{th}}$ share in the disputed property. Now the question would arise as to whether in the changed circumstances, lower Appellate Court was justified in granting a decree for mandatory injunction for restraining and

directing the defendant-Nita to hand over the vacant possession and not deciding about the mesne profits?

I am of the view that the lower Appellate court erred in granting decree for possession and at the same time not granting mesne profits. Since Raj Kumar has now 1/5th share in the disputed property, defendant-Nita and her children being the family of Raj Kumar have the right of residence in the said house and now five co-owners can only seek the partition and consequential relief admissible in accordance with law.

In any case, till her life time, Sarla Devi-plaintiff was entitled to possession. Therefore, at the same time it has to be held that Sarla Devi was entitled to mesne profits from 16.6.2008 when the licence was revoked. The further question would arise as to what rate of mesne profits are to be awarded to the plaintiff-Sarla Devi.

I am of the view that considering the object in which ½ share was transferred to Sarla Devi, Raj Kumar husband of the defendant, a sum of Rs. 2,000/- per month for use and occupation of the house from 16.6.2008 till her death i.e. on 15.3.2013 will meet the ends of justice.

In view of forgoing discussion, judgment and decree dated 29.11.2013 passed by learned Additional District Judge, Ambala is set aside and mandatory injunction directing the defendant to vacate the house, stand declined. However, in its place, Sarla Devi-plaintiff now through her legal heirs is held entitled to mesne profits from 16.6.2008 to 15.3.2013 @ Rs. 2000/- per month without any interest. It is also made clear that LRs of plaintiff shall be entitled to avail the legal remedy of partition with consequential relief including mesne profits before the Court of Competent jurisdiction, which shall be equally shared by her four legal heirs

expect Raj Kumar.

In view of above, appeal stands allowed accordingly.

Since, the present regular second appeal is allowed, the misc.
application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

5.4.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No