

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-1245-2017 (O&M)
Date of Decision: 14.08.2018

Iqbal Kaur

--Appellant

Versus

Dhian Singh (deceased) through L.R

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

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

TEJINDER SINGH DHINDSA.J (Oral)

CM-3002-C-2017

In view of the averments made in the application, the delay of 2 days that has occurred in re-filing the present appeal, is condoned.

Application is disposed of.

CM-3003-C-2017

This is an application for bringing on record the L.Rs of respondent Dhian Singh, who has since died.

In view of the averments made in the application, which is duly supported by an affidavit of the appellant, same is allowed subject to all just exceptions. The legal representative, details of whom have been furnished in para 2 of the application is directed to be impleaded as party/respondent in the main appeal.

Application is disposed of.

Main Appeal

Plaintiff is in second appeal before this Court having remained unsuccessful in both the courts below.

Brief facts are that the plaintiff filed a suit for permanent injunction restraining defendant Dhian Singh from interfering in any

manner whatsoever in the actual, physical occupation of the plaintiff pertaining to suit property measuring 2 kanals and comprised in Khasra No.43/24/2 situated at village Binpalke Nangal, Adampur-Bhogpur Road, Tehsil and District Jalandhar.

Suit of the plaintiff was dismissed by the Trial Court on 17.4.2015 and the civil appeal preferred has also met the same fate vide judgement dated 30.8.2016 passed by the learned Additional District Judge, Jalandhar.

Learned counsel representing the plaintiff-appellant has vehemently argued that in a suit for permanent injunction mere possession over the suit property had to be proved and in this regard electricity bill in the name of the plaintiff had been duly adduced on record but the same has been erroneously brushed aside by both the courts below. Further argued that the plaintiff has been non-suited by observing that Dhian Singh was allottee of the suit property and who had subsequently sold the same in favour of Surinder Kaur. It is contended that such observations are perverse and contrary to record. Further argued that an agreement to sell pertaining to the suit property had been entered into on 5.4.1968 between the original owner i.e. Mohd. Abbi and the plaintiff-appellant Iqbal Kaur as also her mother Ishar Kaur. It is urged that there was a recital in the agreement to sell dated 5.4.1968 itself as regards delivery of possession. It is urged that such agreement to sell was revalidated on 18.3.1999 and in both of such documents i.e. the original agreement to sell dated 5.4.1968 and revalidation thereof dated 18.3.1999 there was a specific recital regarding delivery of possession of the suit property. It is argued that under such circumstances the courts below have erred in denying in favour of the plaintiff-appellant

the relief of permanent injunction qua the suit property.

Having heard counsel for the appellant at length and having perused the case paper book, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

The suit filed by the appellant seeking permanent injunction qua the suit property was on the basis of ownership. The reliance placed upon the agreement to sell dated 5.4.1968 as also revalidation thereof on 18.3.1999 is wholly misplaced. Mere agreement to sell does not confer title. It stands conceded during the course of arguments that no sale deed had been executed in pursuance to the agreement to sell as also the document whereby it was purportedly revalidated on 18.3.1999. Rather Mr. Gill learned counsel representing the appellant would concede that a suit for specific performance on the strength of such agreement to sell had been instituted but the same was dismissed. No other evidence had been adduced on record to prove title/ownership of the suit property by the plaintiff-appellant.

Undoubtedly, it was a suit seeking relief of injunction simpliciter. Even though, the appellant may not have proved ownership but it was imperative upon her to have proved actual physical possession over the suit property. The uncontroverted position is that the appellant had not adduced any cogent and conclusive evidence pertaining to possession of the suit property. No copy of Jamabandi or Khasra Girdawari had been adduced on record in relation to Khasra No.43/24/2.

In the considered view of this Court, the view taken by the courts below that mere electricity bill cannot establish possession over the suit property is perfectly valid.

The submission raised by counsel to the effect that Dhian Singh was not the original allottee and he had not sold the land in favour of Surinder Kaur as has been observed by the Lower Appellate Court would be of no consequence. It was the suit that had been instituted by the appellant seeking relief of permanent injunction. She had to stand on her own legs. No cogent and credible evidence having been led to prove possession over the suit property, the relief of permanent injunction has been rightfully declined by the courts below.

No question of law much less a substantial question of law has been raised in the present appeal.

The appeal, accordingly, is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

14.08.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No