

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

**R.S.A No.1990 of 2018(O&M)
Date of decision :09.08.2018**

Ishwar Dharra

..... Appellant

Versus

Sudesh Kumari

..... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sant Lal Barwala, Advocate
for the applicant-appellant.

LISA GILL,J

CM-5508-C of 2018.

Heard.

Keeping in view the averments in the application duly supported by an affidavit as well as arguments addressed, delay of 01 day in filing of this appeal is condoned.

Application is disposed of.

RSA No. 1990 of 2018.

The appellant-defendant is aggrieved of judgment and decree dated 16.12.2017 passed by the learned District Judge, Hisar, upholding the judgment and decree dated 15.04.2014, passed by the learned Civil Judge (Jr. Division), Hisar, whereby the suit filed by the plaintiff-

respondent has been decreed.

Brief facts necessary for the adjudication of the case are that the respondent-plaintiff filed a suit for mandatory injunction directing the appellant-defendant to handover the vacant possession of House No. 1997, Ward No. 15, Old No. 588, Gulab Colony, Uklana, Mandi, Hisar. boundaries of which were duly mentioned in the plaint. It was further prayed that the appellant was a licensee, therefore recovery of mesne profits at the rate of ₹12,000/- per year for occupation of the said house from the filing of the suit till its vacation be ordered as well. It was pleaded that the respondent-plaintiff is the owner of the house in question, which was purchased by her from Jagdish son of Anant Ram vide sale deed no. 499 dated 08.06.2004. Vacant possession of the house was delivered to her by Jagdish at the time of the registration of the sale deed. Appellant is the brother of the respondent-plaintiff. He sought to reside in the house in question as a licensee. Respondent-plaintiff's husband, it was pleaded was serving the Army and at that time was posted at Udampur, Jammu and Kashmir. Plaintiff used to reside with her husband, therefore possession of the house in question was handed over to the defendant-appellant in June 2004 as a licensee on a licensee fee of ₹12,000/- per year for a period of seven (07) years till June 2011.

After expiry of the license period in the month of June 2011, the appellant was requested to vacate the house in question, but to no avail. License fee was also not paid by the appellant. Registered legal notice dated 25.04.2012 (Ex.P-6) was sent to the appellant. He was personally requested to vacate the premises on 28.04.2012 and pay the

mesne profit, but he refused. Therefore, the suit was filed.

Appellant-defendant resisted the suit. Written statement was filed taking various preliminary objections. The averments on merits were denied. It was specifically pleaded by the appellant that a wrong house number has been given. Boundaries are incorrectly mentioned. Moreover, a fraud has been played upon the appellant-defendant by his sister in collusion with Jagdish, who is an uncle of the plaintiff as well as defendant. Appellant pleaded that he entered into an agreement for purchase of a portion of the house with Jagdish Chander through his father-Sita Ram on 16.12.2003 for a sum of ₹1,40,000/-. ₹40,000/- was paid as earnest money to said Jagdish Chander in respect to the house in question. Sale deed was to be executed on or before 19.02.2004. Sum of ₹1 lakh was paid to Jagdish on 09.02.2004. Receipt for a sum of ₹1,40,000/- was issued by Jagdish Chander to the appellant. Appellant was entered as the owner of the house in question in the Panchayat record. Thereafter, Jagdish entered into another agreement to sell of the house in question with the plaintiff-respondent for a sum of ₹1,40,000/- and sale deed was executed in her favour on 08.06.2004. Appellant came to know about the sale deed on 11.06.2004. Complaint was moved against Jagdish Chander and the plaintiff at Police Station Uklana. The house in question was stated to be in possession of the appellant-defendant. It was denied that the plaintiff is entitled to the vacant possession of the house or for payment of any mesne profits. It was thus prayed that the suit be dismissed.

Replication was not filed.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled for the relief of mandatory injunction as prayed for?OPP
2. Whether suit of the plaintiff is false, frivolous and is liable to be dismissed with special costs u/s 15 A of CPC?OPD
3. Whether suit is bad on account of non-joinder of necessary parties?OPD
4. Whether plaintiff has no cause of action and locus standi to file the present suit?OPD
5. Whether plaintiff is estopped to file the present suit by his own act and conduct?OPD
6. Whether suit is not maintainable in the present form?OPD
7. Whether plaintiff has not come to the Court with clean hands?OPD
8. Relief.

Evidence was led by both the parties.

Learned trial Court returned a finding in favour of the respondent-plaintiff on issue no.1. Issue no.2 to 3 were decided against the appellant and in favour of the plaintiff. Accordingly, suit of the respondent-plaintiff was decreed directing the appellant to vacate the house in question and deliver the possession thereof within three months. Respondent-plaintiff was held entitled to mesne profits from July 2011 till delivery of the possession.

Appeal preferred by the appellant was also dismissed by the learned District Judge, Hisar, vide impugned judgement and decree dated 16.12.2017.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that the property in question has not been identified. In-fact, there was a family settlement. Jagdish Chander from whom the property was purchased, is

the parental uncle of the appellant and the respondent i.e. a brother of their father-Sita Ram. Both the learned Courts below, it is contended have fallen in grave error in allowing the suit filed by the respondent-plaintiff, who is none other, but the sister of the present appellant. It is further submitted that the appellant had entered in an agreement for the purchase of a portion of the house owned by Jagdish Chander through the appellant's father-Sita Ram. Receipt of payment of ₹1,40,000/- was duly executed by Jagdish Chander. The appellant was entered as the owner of the property in question in the record of rights maintained by Panchayat. It is thus prayed that this appeal be allowed and impugned judgments and decrees passed by the learned Courts below be set aside.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is to be noted that ownership of Jagdish over the suit property is not disputed by the appellant. Both the parties claim to have purchased the property in question from Jagdish. Appellant and the respondent are real brother and sister. Jagdish, is their uncle (Chacha) being a brother of their father Sita Ram. Jagdish had got the property in question pursuant to a Civil Suit preferred by Jagdish along with Sita Ram. Claim of the appellant that the suit property was purchased by him for a sum of ₹1,40,000/- through his father-Sita Ram is clearly falsified by Ex.P-4, which is a cancellation receipt whereby the earlier agreement to sell of house owned by Jagdish in favour of Sita Ram, father of the plaintiff and defendant, was cancelled. The amount paid and possession of the house was swapped. The appellant has not proved on record the

earlier agreement to sell in favour of Sita Ram nor the receipt showing payment of consideration amount was produced. It is relevant to note at this stage that the appellant did not even step into the witness box to assert ownership and establish his case as pleaded in the written statement. There is no evidence on record to indicate that Ex.P-4, is a forged and fabricated document as claimed. Much stress has been laid on Ex.R-6, which is claimed to be the record of rights maintained by the Panchayat as well as Ex.D-15 i.e. a certificate issued by Sarpanch of Gram Panchayat Uklana Mandi to the effect that House No. 1394, is registered in the name of the present appellant.

Learned trial Court has rightly observed that the said documents do not indicate ownership of the appellant of the property in question. Ex.R-7 (copy of resolution no.2 passed by Panchayat Uklana Mandi) is a notice issued to the appellant for leaving construction material in the street. Ex.R-6 (copy of Register of Municipal Committee Uklana Mandi) reflects the appellant to be recorded as a head of the family and appears to be a residential survey by the Panchayat. Nature of the record has not been mentioned therein. Certificate issued by a Sarpanch in respect to the ownership of the property cannot be treated as conclusive proof thereof in the absence of any document to this effect. Registered sale deed dated 499 dated 10.06.2004 in favour of the plaintiff-respondent, is duly proved on record. Infact the said sale deed is admitted by the appellant. Perusal of the record reveals that identity of the suit property is not in doubt. No dispute regarding the same was raised in the written statement. Appellant claimed the suit property owned by

Jagdish Chander to be his own having been purchased through his father Sita Ram for a sum of ₹1,40,000/-. Pleading of the appellant is to the effect that Jagdish Chander and his sister had colluded and property already sold to the appellant was fraudulently sold again to his sister, the plaintiff. The appellant claimed to be in possession of the house in dispute. Therefore, it is clear that the appellant clearly understood the identity of the suit property and claimed the same on the basis of a prior agreement to sell. However, he failed to prove his ownership over the property admitted to be earlier owned by Jagdish. It is specifically observed by the learned Courts below that the plaintiff gave the detailed description and the boundaries of the suit property in the plaint itself. The house in question is not identified by the house number alone. Said description and the boundaries of the suit property are not disputed by the appellant. The case set up by the appellant is of fraud played by Jagdish in collusion with his sister, the plaintiff. Thus the argument raised by learned counsel in regard to the identity of the property is of no benefit to the appellant and is accordingly rejected.

No other argument has been raised.

Learned counsel for the appellant-defendant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned

judgments and decree dated 15.04.2014 and 16.12.2017 passed by the learned Civil Judge (Jr. Division) Hisar and learned District Judge, Hisar, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

09.08.2018

s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No