

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

RSA No. 2644 of 2017 (O&M)

Date of decision : July 12, 2018

Sheela Devi and another

.....Appellants

Versus

Smt. Inder Kaur and others

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashish Gupta, Advocate for
Mr. Kushagra Mahajan, Advocate
for the appellants.

LISA GILL, J.

The appellants are aggrieved of judgment and decree dated 13.08.2015 passed by the learned Additional Civil Judge (Senior Division), Samalkha as well as judgment and decree dated 15.11.2016 passed by the learned District Judge, Panipat.

Brief facts are that suit for mandatory injunction was filed by plaintiff/respondent No. 1 – Inder Kaur against the present appellants as well as respondent No. 2 (now represented through his legal representatives). Respondent No. 1 - plaintiff sought mandatory injunction against the defendants to remove a gate, demolish toilet, shed, close the door and window as described in the plaint and further restraining the said defendants from interfering in her peaceful possession over the plot or from raising any construction/making any encroachment over the said plot. Plaintiff – Inder Kaur claimed to be the owner of the plot as described in the plaint, having purchased the same vide sale deed dated 24.01.1991 registered with the Sub Registrar, Samlkha. The plot, it was averred, was

earlier surrounded by plots but now houses have been constructed thereon. The plaintiff stated that she used to visit the plot about once a month. She collected building material with a view to raise construction over the plot but due to unavoidable circumstances, she could not raise construction thereon. Building material was lying on the plot. A twenty years old Neem tree was also growing on the plot. Defendants, it was contended, illegally affixed a gate, constructed a toilet, affixed a door and a window, which opened towards the suit plot as detailed in the site plan. The plaintiff had no other ingress and egress to the suit plot. She requested the defendants to remove illegal construction but in vain. Hence, the suit was filed.

Defendants resisted the suit raising various preliminary objections and denying averments about any illegal encroachment. It was stated that the plaintiff - Inder Kaur as well as her husband - Balwan Singh were well known to defendant No. 2 being inhabitants of neighbouring villages and belonging to the same caste. Defendant No. 3 - Tara Chand purchased the plot for defendant No. 2 Sheela Devi in the year 1996 for a total sale consideration of ₹1,35,000/-, which was paid to the plaintiff and her husband at Deepak Cement Store, Samalkha in the presence of Gopi Chand Deswal. Physical possession of the suit land was handed over to defendant No. 2. Thereafter, construction was raised thereon. Despite request, the sale deed was not executed by the plaintiff. Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is the owner in possession over the suit land and defendants have illegally encroached upon the suit land by constructing a gate, toilet, shed, window etc. as

alleged in the head note of the plaint and site plan attached with the plaint?OPP.

ii) Whether the plaintiff had entered into an agreement to sell as alleged in the written statement, and its effects upon the rights of the parties? OPD.

iii)Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record facts and circumstances, decreed the suit filed by the plaintiff – Inder Kaur. Appeal preferred by the present appellants was dismissed by the learned District Judge, Panipat vide judgment and decree dated 15.11.2016.

Learned counsel for the appellants submits that both the learned courts below have grossly erred in allowing the suit filed by the respondent – Inder Kaur. Evidence on record clearly shows that the land in question had been sold to them in the year 1996 itself and they had been in possession thereof since then. Valuable consideration of ₹1,35,000/- was handed over to the defendants. Hand pump, electricity connection was installed. Construction was raised on the suit property by the appellants. Moreover, the present suit was not maintainable in the said form as respondent No. 1 herself admitted that she was not in possession of the suit property. Direction for removal of the encroachment could not have been given in the suit filed for mandatory injunction. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 13.08.2015 by the learned Additional Civil Judge (Junior Division), Samalkha and judgment and decree dated 15.11.2016 passed by the learned District Judge, Panipat be set aside.

I have heard learned counsel for the appellant and have perused the file.

It is not in dispute that the plaintiff – Inder Kaur proved on record that she purchased the suit property vide sale deed dated 24.01.1991 (Ex.P1). PW2 Satish Kumar specifically deposed that he and Fateh Chand sold the suit property to the plaintiff vide said sale deed Ex.P1. Possession of the same was delivered to her. Site plan (Ex.P3) was proved by PW3 Rishi Lal.

Per contra, the appellants set up a case that defendant No. 3 Tara Chand (respondent No. 2 in the present appeal) purchased the suit land for appellant No. 1 for a sale consideration of ₹1,35,000/-. It was further pleaded that possession of the land was handed over to the appellants pursuant thereto. There is no evidence on record to show that any such agreement to sell was ever entered into between the parties. It is an oral agreement, which is being alleged. There is no receipt regarding payment or receiving of the consideration amount of ₹1,35,000/- by the plaintiff or her husband. DW1 i.e. appellant No. 2 Surat Singh claimed that his father-in-law made the payment of the suit property in 1996 whereas DW2 i.e. appellant No. 1 - wife of appellant No. 2 and daughter of Tara Chand in her cross examination stated that her father never purchased any other property except the property in which he was residing (not the present suit property). There is indeed no evidence on record to show that the property in question was purchased by the appellants in the year 1996 or its possession was delivered to them.

During the course of arguments, it has been stated that a criminal complaint was filed by the appellants, however, details thereof are not forthcoming neither is it a part of the written statement or the pleadings which have been furnished during the course of hearing.

Both the learned Courts below have rendered correct and concurrent findings of fact on a proper appreciation of evidence on record which calls for no interference by this Court.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal for the consideration of this Court.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in judgment and decree dated 13.08.2015 passed by the learned Additional Civil Judge (Senior Division), Samalkha as well as judgment and decree dated 15.11.2016 passed by the learned District Judge, Panipat which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

July 12, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No