

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 21.09.2018

1. RSA No.3401 of 2017 (O&M)

Farmeena

..... Appellant

Versus

Haroon

..... Respondent

2. RSA No.4185 of 2017 (O&M)

Farmeena

..... Appellant

Versus

Haroon

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Chanderhas Yadav, Advocate
for the appellant (in both cases).

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of two appeals bearing RSA No.3401 of 2017 and RSA No.4185 of 2017 which are connected. Counsel for the appellant also agrees that both the appeals can be conveniently disposed of by a common judgment.

Plaintiff-appellant is in the regular second appeal against the judgments passed by both the Courts below.

Learned trial Court had partly decreed the suit by granting a decree of permanent injunction that the plaintiff is entitled to protect her possession over the land which was not subject matter of suit titled as

'Haroon Vs. Farmina'. However, the learned First Appellate Court has dismissed the suit while allowing the cross appeal filed by the defendant.

The plaintiff filed a suit seeking decree of declaration claiming that the judgment and decree dated 16.02.2013 be declared illegal, null and void. It will be noted that the judgment dated 16.02.2013 has been passed in between the parties to this litigation. The plaintiff was proceeded against ex parte in the aforesaid suit but rather than filing an application for setting aside the ex parte under Order 9 Rule 13, CPC, the present suit was filed.

The plaintiff claim that she is owner in possession of land described in the plaint on the ground that she has purchased the suit land vide sale deed dated 31.10.2005 from Sh. Subhash. She claimed that the defendant has obtained the decree dated 16.02.2013 by concealing the material facts.

The defendant contested the suit. It was pleaded that the vendor of the plaintiff was not in possession of the property and it is the defendant who is in the actual physical possession thereof since the time of his ancestor. The defendant further pleaded that he filed a previous suit in which the plaintiff-appellant (defendant in the aforesaid suit) although appeared in the suit through counsel but did not file the written statement and ultimately, the suit was decreed vide judgment dated 16.02.2013.

Both the Courts as noticed above dismissed the main relief sought by the plaintiff, however, the learned trial Court only granted injunction in favour of the appellant to the extent that the land which is not part of the judgment and decree dated 16.02.2013, the plaintiff shall be entitled to protect her possession. However, the aforesaid part of judgment of the learned trial Court has been reversed by the learned First Appellate

Court while hearing two appeals, one filed by the plaintiff and second filed by the defendant.

The learned First Appellate Court has noticed that the plaintiff in order to prove concealment of fact was required to file copy of the plaint of the previous suit titled as 'Subhash Vs. Haroon' from which it can be inferred that Haroon was also one of the party to the suit filed by Subhash but neither the plaint nor written statement nor copy of judgment was filed.

It has further been noticed that although the plaintiff has pleaded that she had no knowledge of the pendency of the case resulting into judgment dated 16.02.2013, however, three witnesses examined by her have identified her signatures of her counsel on the Vakalatnamas (Power of Attorney given to Advocates) filed by Farmeena in the previous suit. The thumb impressions of Farmeena are available on these Vakalatnamas. No substantive evidence was led to prove that the Vakalatnama was not thumb marked by her except her own bald statement. It has further been proved on file that Farmeena, the plaintiff-appellant had the knowledge of the pendency of the previous suit but she did not appear in the aforesaid previous suit titled as 'Haroon Vs. Farmeena'. The learned First Appellate Court further held that the learned trial Court has erred in granting relief to the plaintiff with respect to the land comprised in Rect. No.24, Killa No.6 because the rights of the parties with respect to the possession over this piece of land stood crystalized by virtue of Ex.DW-1/A (judgment in the suit titled 'Haroon Vs. Farmeena' dated 16.02.2013).

Although, learned counsel for the appellant made an attempt to persuade this Court to take a different view, however, he neither could point out any perversity in the judgments passed by the Courts below nor

any misreading or non-reading of evidence.

In view thereof, there is no ground to interfere with the judgments passed by the Courts below.

Both the appeals are dismissed.

21.09.2018

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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