

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

**RSA No.358 of 2018 (O&M)
Date of decision: 15.02.2018**

Birwati

.....Appellant

Versus

Smt. Saraswati alias Pinki and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jangvir S. Hooda, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.927-C of 2018

In view of the averments mentioned in the application, same is allowed and delay of 99 days in filing of the appeal is condoned.

RSA No.358 of 2018

This appeal has been directed against the judgment of reversal dated 06.07.2017 passed by the District Judge, Palwal, whereby appeal filed by defendants (respondent Nos.1 and 2 herein) against the judgment & decree dated 30.04.2016 passed by the Civil Judge (Junior Division), Palwal, has been accepted and suit filed by the plaintiffs (appellant and respondent No.3 herein) for permanent injunction, has been dismissed.

Plaintiffs (appellant and respondent No.3 herein) filed the aforesaid suit for permanent injunction to the effect that Sh. Gian Chand, husband of plaintiff No.1-Birwati and father of plaintiff No.2-Devinder was owner in possession of a residential plot shown with letters ABCD in the

site plan annexed with the plaint. After the death of Gian Chand, plaintiffs had become co-owners to the extent of 1/3rd share in the said plot on the basis of a Will dated 22.08.2013 executed by him (Gian Chand). It was alleged that they had become co-owners of the portion shown with letters FEBC in the site plan. It was further stated that defendant No.1 (who was wife of plaintiff No.2) was having illicit relations with defendant No.2 and without getting divorce from plaintiff No.2, she had started residing with defendant No.2 as his wife. Both the defendants, in collusion with each other, had procured signatures of plaintiff No.2 on some blank papers. They were threatening to interfere in the peaceful and lawful possession of the plaintiffs over the suit property and were trying to dispossess them from the same. Hence, the suit.

Upon notice, defendant No.1 filed written statement taking preliminary objections with regard to maintainability, cause of action, locus standi, estoppel, suppression of material facts etc. On merits, relationship between the plaintiffs and defendant No.1 was admitted. However, it was denied that the plaintiffs were in possession of the suit property. It was stated that defendant No.1 was residing in the suit property being wife of plaintiff No.2, who was indulged in the vices of gambling and drinking. It was further stated that plaintiff No.2 had deserted defendant No.1 without any reasonable cause. Now, she was residing in the disputed house as owner. The electricity meter was installed in her name. She had rented out a shop forming part of the disputed property to defendant No.2 for the purpose of livelihood of her children and herself. It was denied that the plaintiffs had become owners in possession of the disputed property on the basis of any Will.

Defendant No.2 filed a separate written statement, wherein it was stated that he had unnecessarily been dragged into a false and fictitious litigation. It was stated that plaintiffs and defendant No.1 had rented out a shop forming part of the disputed property to him and he was running a retail business therein. All other allegations levelled by the plaintiffs in the plaint were denied and prayer for dismissal of the suit was made.

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

1. Whether the plaintiffs are entitled to a decree of permanent injunction to the effect of restraining the defendants from alienating the suit land or creating any charge over the same in any manner, detailed in para no.1 of the plaint on the grounds mentioned in the plaint? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
4. Whether the plaintiffs have not come with clean hands and concealed the material facts from the Court? OPD
5. Whether the plaintiffs are estopped by their own act, conduct and omission from filing the present suit? OPD
6. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit thereby restraining defendants-respondent Nos.1 and 2 from interfering into the peaceful possession of the plaintiffs by way of encroachment, alienation and in any other manner whatsoever.

However, on appeal, the lower appellate Court observed that execution of the Will Ex.P1 (relied upon by the plaintiffs) was not proved by examining either of the attesting witnesses to the same. Even if, the Will

was presumed to have been executed, it did not mention the details of the

properties of Gian Chand. It had simply stated that whatsoever properties he was having, would be owned by the plaintiffs to the extent of 1/3rd share after his death. The plaintiffs have produced on record copies of jamabandi for the year 2001-02 and mutation No.26304 Ex.P2 to Ex.P4 to show that Gian Chand was co-owner to the extent of ½ share in 19/62 share of the *gair mumkin* properties comprised in Rect. No.199, Killa Nos.12/3 and 19/3 respectively and this property had been inherited by the plaintiffs to the extent of 1/3rd share and remaining 2/3rd share of Gian Chand was bequeathed in favour of his other legal heirs. No evidence was led by the plaintiffs to show that the property comprised in rect. No.199, Kila Nos.12/3 and 19/3 was the same property which was shown in site plan Ex.P1 with letters FEBC. It was further observed that the plaintiffs had categorically admitted that it was the defendant No.1, who was in possession of the disputed house and defendant No.2 was in occupation of the shop forming part of the house in dispute. Birwati (PW-1), in her cross-examination, had admitted that plaintiff No.2 himself had let out the shop in dispute to defendant No.2, but subsequently, she denied this fact. She had also admitted that defendant No.1 was in actual physical possession of the disputed property. Devender (PW-2) also admitted that he had deserted his wife and was residing separately from her. He also admitted that he had not been maintaining her. During cross-examination, PW-2 admitted that he was not in possession of the disputed property. He also admitted that he along with his mother was residing in this house. Hence, admission of the plaintiffs that they were not in possession of the house, was sufficient to dismiss the suit of the plaintiffs. With these observations, appeal filed by the defendants-respondent Nos. 1 and 2 was accepted and suit of the plaintiffs

was dismissed by the lower appellate Court.

After going through the impugned judgments, this Court is of the view that since in the suit, plaintiffs had not claimed possession and it was a suit simpliciter for permanent injunction, the lower appellate Court has rightly accepted the appeal and dismissed the suit filed by the plaintiffs, as the revenue entries merely showed the plaintiffs to be co-owners in possession of the property comprised in Rect. No.199. Moreover, the plaintiffs themselves had admitted possession of the defendants over the suit property. Accordingly, no illegality, much less perversity, has been found in the findings given by the lower appellate Court, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, finding no merits, the present appeal is dismissed.

15.02.2018
ajp

(RITU BAHRI)
JUDGE

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