

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6450 of 2017 (O&M)
Date of decision:14.08.2018.

Shimla Devi alias Simla Devi

...Appellant

Versus

Ramesh Devi and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Swati, Advocate and
Mr. J.S. Saneta, Advocate for the appellant.

LISA GILL, J.

The plaintiff/appellant is aggrieved of the judgment and decree dated 12.08.2014 passed by learned Civil Judge (Junior Division), Karnal as well as the judgment and decree dated 06.07.2017 passed by learned Additional District Judge, Karnal.

The appellant had filed a suit for declaration to the effect that sale deed dated 13.03.2003 executed by her husband Satpal in favour of respondents No.1 and 2 is illegal, null, void and not binding on the rights of the present appellant and her husband. Mandatory injunction directing the respondents No.1 and 2 to handover the vacant possession to the appellant and her husband as well as permanent injunction restraining the respondents No.1 and 2 from alienating the property in dispute was sought.

It was pleaded that proforma defendant/respondent No.3-Satpal, husband of the present appellant, was an allottee of the plot measuring 3

marla comprised in khasra No.69/21/15 situated in the revenue estate of Village Takhana, Tehsil Nilokheri, District Karnal. Allotment was made to the appellant's husband on 11.10.1985 by the Gram Panchayat of Village Takhana, District Karnal under the 20 Point Programme of Government of Haryana on a specific condition that the said plot shall not be alienated to any other person by the allottee nor the same can be gifted to anyone. The ownership rights will remain with the allottee i.e. defendant No.3 or with his legal heirs. Since 1985 the appellant and her husband were in possession of the plot. Respondent No.2 requested the appellant's husband to give the above said plot on a yearly lease. The appellant's husband agreed to execute a registered lease in favour of defendant No.2 @ Rs.500/- per month. However, respondent/defendant No.2 in collusion with other witnesses intoxicated her husband and under the influence of liquor, sale deed dated 13.03.2003 was executed by the appellant's husband in favour of respondent No.1 - Ramesh Devi wife of respondent No.2. When the appellant and her husband demanded arrears of rent amounting to Rs.23,500/- from defendant No.2 on 09.02.2010, he refused on the pretext that he has become owner of the plot in question by way of sale deed dated 13.03.2003. It was pleaded that fraud was committed upon the appellant and her husband. In place of respondent No.1, photograph of another person has been affixed as purchaser on the backside of the sale deed. The appellant as well as her husband requested respondents No.1 and 2 to get cancelled the sale deed dated 13.03.2003 and handover the vacant possession of the plot in question to the plaintiff but respondents No.1 and 2 refused to do so. Hence, the suit was filed.

Respondents No.1 and 2 resisted the suit. Written statement was filed taking various preliminary objections. Averments on merits were denied. It is specifically contended that sale deed of the property in question was executed by appellant's husband in favour of respondent No.1 for consideration. The said property was given by respondents No.1 and 2 to one of their close relative namely Joginder Singh, who was running a unit under the name and style of Shree Ram Steel Works along with a brother of respondent No.2. Electricity connection was also got installed in the name of respondent No.2. It is specifically denied that the property in question was ever leased out at the rate of Rs.500/- per month. It was contended that the appellant's husband Satpal was in need of money for his domestic purposes, therefore, the property in question was sold to defendant No.1 for a valuable consideration of Rs.18,500/-. Dismissal of the suit was prayed for by respondents No.1 and 2.

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

1. Whether the plaintiff is entitled for a decree for declaration and mandatory injunction with consequential relief of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has got no locus-standi as well as cause of action to file and maintain the present suit? OPD
4. Whether the plaintiff is stopped from filing the present suit by her own act and conduct? OPD
5. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary and proper parties? OPD

6. Whether the plaintiff has suppressed the true and material facts from the court? OPD

7. Relief.

Learned trial Court on consideration of the facts and circumstances, decided issue No.1 in favour of defendants/respondents No.1 and 2 and against the appellant. Issues No.2 to 6 were also decided in favour of respondents No.1 and 2 as well. Suit filed by the appellant/plaintiff was accordingly dismissed.

Appeal preferred by the appellant was also dismissed by learned Additional District Judge, Karnal, vide judgment and decree dated 06.07.2017. Aggrieved there-from, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the sale deed dated 13.03.2003 is not proved to be executed by respondent No.3. It is submitted that the appellant's husband Satpal was got intoxicated by respondents No.1 and 2 and it was in a fraudulent manner that the sale deed was executed. Moreover, there is a specific provision in the allotment letter that the said plot cannot be alienated to any other person in any manner by the allottee. Therefore, both the learned Courts below have grossly erred in dismissing the suit filed by the appellant. It is thus prayed that this appeal be allowed and the impugned judgments and decrees be set aside, consequently decreeing the suit filed by the appellant throughout.

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

It is not in dispute that the owner of the plot in question is Satpal, husband of the present appellant. It is further not in dispute that Satpal is very much alive. Execution of the sale deed Ex.P1 is not denied. The case

set up by the appellant/plaintiff is that the sale deed was executed in a fraudulent manner when her husband was in an intoxicated state. There is indeed not an iota of evidence to substantiate such a plea. The sale deed in question was executed on 13.03.2003. The present suit was filed on 23.08.2010 by the appellant, who is the wife of the vendor. There is no explanation whatsoever as to why no action was taken during the interregnum. Plea of the appellant that the plot in question was given on lease to respondents No.1 and 2 in 2003, they stopped paying the rent in 2006 and the present appellant and her husband asked for the arrears in 2010, on which they came to know of the sale deed dated 13.03.2003 is palpably incorrect and unsubstantiated. It is to be noticed at this stage that written statement was not filed by respondent No.3-Satpal and neither did he appear before the learned trial Court. He was proceeded against ex parte but he appeared as PW2 to support the case of the appellant/plaintiff. His affidavit was placed on record as Ex.PW2/A. Testimony of this witness is extremely relevant. PW2 specifically admitted the receipt of Rs.18,500/- from respondent No.1. He further admitted the execution of the sale deed in favour of respondent No.1 after receiving valid sale consideration. It is specifically observed by the learned trial Court that PW2 has not uttered a word in regard to the fraud allegedly committed by respondents No.1 and 2. PW2 denied that he used to take liquor.

It is not denied that respondents No.1 and 2 had raised construction over the plot in question. Electricity connection for the purpose of carrying their firm M/s Shri Ram Steel Works was obtained. The appellant and her husband were, needless to say, aware of the factual position. Argument on behalf of the appellant that in view of the specific condition of

the allotment, sale deed could not have been executed is a ground which is not available to her in any situation. If at all, it is for the concerned authorities to take necessary action against the appellant's husband and concerned persons. However, no right whatsoever accrues to the appellant to challenge the sale deed dated 13.03.2003. Therefore, I do not find any merit in the arguments raised on behalf of the appellant.

No other argument has been raised.

Learned counsel for the appellant-plaintiff 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 decrees dated 12.08.2014 and 06.07.2017 passed by the learned Civil Judge (Jr. Division), Karnal and learned Additional District Judge, Karnal, respectively, which warrant any interference by this Court.

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

(LISA GILL)
JUDGE

August 14, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No