

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

RSA-2078-2011(O&M)

Date of decision:-10.5.2019

Smt.Santosh Devi

...Appellant

Versus

Bhom Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajesh Bansal, Advocate for the appellant.

Mr.Vipan Sharma, Advocate for
Mr.S.M.Sharma, Advocate for respondents No.1 to 5.

Mr.M.K. Mittal, Advocate
for respondents No.6 and 7.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Smt.Santosh Devi widow of Sh.Shish Ram son of Sh.Mohan Lal, resident of Azad Chowk, Rewari, then residing at Vyas Marg, Shakti Nagar had brought a suit for declaration, possession and permanent injunction against defendants Bhom Singh and others. As per the version of the plaintiff, she was owner in possession of the suit land measuring 6 kanals 5 marlas on the basis of mutation dated 24.1.1994; that earlier Shish Ram, husband of the plaintiff was owner in possession of the suit land, however

he died; that during his life time, he had executed a Will dated 17.9.1993 in favour of the plaintiff, therefore after death of Shish Ram, mutation with regard to the suit land was sanctioned in favour of the plaintiff; that the defendants No.1, 2 & 4 to 6 had executed a general power of attorney dated 5.12.1977 in favour of the defendant No.3, on the basis of which defendant No.3 sold away some land to defendants No.7 to 9 vide registered sale deeds but in pursuance thereof, in addition to the said land, he delivered the possession of the portions measuring 2 marlas 5 marlas and 6 marlas to the vendee defendants No.7 to 9, respectively; that the portions were forming the part of the suit land; that after getting possession of the portions, the defendants No.7 to 9 occupied the same by way of constructing their residential houses thereon; that Sh.Shish Ram, husband of the plaintiff during his life time had got conducted demarcation on 1.6.1993 from one Hira Singh – Girdawar in pursuance of the order dated 28.5.1993 passed by AC IInd Grade, as a result of demarcation, the encroachment on the portions of the suit land as made by defendants No.7 to 9 was found out; that the encroachments is reflected in the site plan attached with the plaint; that after death of Shish Ram, defendant No.6 – Rajender Kumar, a relative of the plaintiff assured the plaintiff that they had enough land with them, therefore, they would make good the deficiency in the plaintiff's land with respect to the portions over which the defendants No.7 to 9 had encroached upon but subsequently they refused to do so, therefore, the plaintiff filed the suit in question seeking a declaration that portions of the suit land marked with letters ABCD measuring 2 marlas, EFGH measuring 5 marlas and IJKL

measuring 6 marlas encroached upon by defendants No.7 to 9 respectively formed the part of the suit land, in respect of which she was owner and that the defendants had no concern or connection whatsoever therewith. The plaintiff further craved for possession of aforesaid portions of the suit land by way of decree for possession on the basis of her title; the plaintiff also sought a restraint order against the defendants from selling away the already constructed houses on the encroached portions or creating any encumbrance thereon by way of decree of permanent injunction.

Though defendants No.1, 6 to 9 had filed their separate written statements but those were on the similar lines as that of the other defendants. The defendants in their written statements had raised preliminary objections challenging locus standi of the plaintiff to bring the suit contending that the suit was not maintainable; that the plaintiff was estopped from filing the suit by her own act and conduct; that suit was barred by limitation; that the suit was bad for misjoinder of the parties and for want of deficient Court fee; that the plaintiff had suppressed the true and material facts from the Court; that the vendee defendants had purchased the suit land being bona fide purchasers; that no cause of action arose to the plaintiff to file the suit. The material assertions in the plaint were controverted. It was denied that defendant No.3, who was general power of attorney of defendants 1,2 and 4 to 6 had sold away any portion of the suit land, delivering the possession of portions of the suit land to vendees i.e. defendants No.7 to 9 in pursuance of the sales in question. It was contended that on the contrary, defendant No.3, as general attorney of the defendants No.1, 2 and 4 to 6 had sold away only those portions to the

vendees defendants No.7 to 9 i.e. Vishnu, Ramesh and Bahadur in respect of which he was owner in possession; that after having purchased the aforesaid portions from the defendant No.3, the vendees-defendants had constructed their houses thereon and if the vendees defendants had encroached upon any alleged portions of the suit land, then it was bounden duty of the plaintiff to prove that; that the defendants were not aware of any alleged demarcation got conducted by the late husband of the plaintiff in respect of the suit land; that as far as site plan attached with the plaint, it was also dubbed as wrong and factually incorrect not binding on the rights of the defendants. It was contended that the vendee defendants No.7 to 9 were bona fide purchasers of the portions, which they had purchased from the defendant No.3 for valuable consideration as defendant No.3 was exclusive owner in possession of the portions purchased by them from him; that after having purchased the aforesaid portions from the defendant No.3, the vendee defendants had constructed their pucca houses thereon after getting the site plans in respect thereof sanctioned from M.C. Rewari as per rules without any sort of objections being raised by either by the plaintiff or her late husband Shish Ram, therefore, the plaintiff was estopped from filing the suit by her own act and conduct; that she had filed the present suit just out of greed on the basis of false and frivolous pleas; that the plaintiff had also affixed deficient Court fee in the present suit; that from the very beginning the plaintiff was also considering the defendants No.7 to 9 as owners of the portions purchased by them; that the whole story as put forward by the plaintiff was false. In the end, the defendants prayed for dismissal of the

suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner in possession of the disputed property, as alleged? OPP.
2. Whether the sale deeds dated 3.8.78 and 7.6.93 are illegal, null and void and not binding on the rights of the plaintiff? OPP.
3. Whether the suit is time barred? OPD.
4. Whether the plaintiff is estopped from filing the present suit? OPD.
5. Whether the suit is not maintainable in the present form? OPD.
6. Whether the suit is barred u/O 2 Rule 2 CPC? OPD.
7. Whether the suit is bad for non-joinder of necessary parties? OPD.
8. Whether the plaintiff has no cause of action? OPD.
9. Whether proper Court fee has not been paid? OPD.
10. Whether the defendant No.2 is bonafide purchaser for consideration, if so, to what effect? OPD.
11. Whether the defendant No.8 has made improvements if so, to what effect? OPD.
12. Relief.

Both the parties led evidence in respect of their claims.

After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiff and in favour of the

defendants, issues No.4, 5, 8 and 10 against the plaintiff and in favour of the defendants, issues No.3, 6, 7 & 9 against the defendants and in favour of the plaintiff, issue No.11 as having become redundant. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 28.2.2005.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Rewari which was assigned to Additional District Judge, Rewari, who vide judgment and decree dated 12.8.2009 dismissed the same.

Being dissatisfied by the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

On getting notice of regular second appeal, the respondents No.1 to 5 and 6 & 7 have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court in its judgment has observed that the plaintiff in the whole of her pleadings including para No.3 of the plaint has nowhere alleged that defendant No.3 – Bhim Singh in the capacity of general power of attorney holder of the defendants No.1, 2 and 4 to 6 had sold away specific number of specific portions forming the part and parcel of the suit land belonging to the plaintiff, in respect to which he himself was not owner and further plaintiff's own witness namely Dharam Singh, who was general attorney of the plaintiff and her real son appearing as

PW10 conceded in his cross examination that the portions purchased by Vishnu Kumar, Ramesh Kumar and Bahadur Chand defendants No.7 to 9, had not fallen to his father but to Bhim Singh i.e. vendor of defendant No.1 and that Bhim Singh had sold that very portion. The trial Court referring to report of local commissioner Ex.PW4/1 had observed that late husband of plaintiff had told the local commissioner that defendants No.7 to 9 had illegally occupied over his portions of the suit land and the local commissioner had not come to the conclusion on the basis of his own demarcation/measurement allegedly conducted at the spot, therefore, report of local commissioner Ex.PW4/1 and site plan Ex.PW4/2 depicting the alleged encroachment of the vendee defendants No.7 to 9 to the extent of 2, 5 and 6 marlas, respectively over the eastern portion and eastern southern portion of the suit land could not be relied upon and the whole claim of the plaintiff stands shattered. The trial Court has found several faults with the report of local commissioner, while referring to cross examination of local commissioner Hira Singh, Halqa Girdawar when he had appeared as PW4. He is not found to have carried out the demarcation as per rules. The trial Court has further taken note of the fact that defendants No.7 to 9 had constructed their pucca houses on the portions purchased by them from defendant No.3 after having got sanctioned their site plans from the Municipal Committee, Rewari without there being any objections from the plaintiff or her late husband namely Shish Ram. The trial Court has also observed that the plaintiff's late husband during his time had already utilized 7 marlas of land in excess of his share. In para No.20, the trial Court had concluded as under:

“20. Thus, in view of my aforesaid discussion, it becomes crystal clear that neither the plaintiff was owner in possession of 2 Marlas, 5 Marlas and 6 Marlas portions of the suit land as detailed in para no.3 of the plaint as alleged by her nor the vendee-defendants No.7 to 9 had made any encroachment over any portion of the suit land, that the three sale deeds by dint of which the defendants No.7 to 9 had purchased the land belonging to the defendants No.1, 2 and 4 to 6 through their general power of attorney i.e. defendant No.3 Bhim Singh are perfectly legal and valid ones and thus fully binding on the rights of the plaintiff, that the vendee-defendants No.7 to 9 are bonafide purchasers of the purchased portions for valuable consideration from the vendor-defendants No.1 to 6 they being the exclusive owner of the sold portions, that neither the plaintiff had any locus-standi nor any cause of action to file and maintain the present suit as she was estopped from filing the present suit by her own act and conduct and that the plaintiff had filed the present suit jut by wilfully and intentionally taking up false and frivolous pleas as an abuse of process of law. Accordingly, both these issues are hereby decided against the plaintiff and in favour of the defendants.”

Similarly the First Appellate Court of Additional District Judge, Rewari had affirmed the findings of the trial Court. In para No.24,

it has observed as under:

“24. Perusal of aforesaid evidence evidently shows that the plaintiff failed to give complete particulars of various portion of land sold by Sh.Shish Ram prior to institution of civil suit. No site plan regarding the areas sold by Shish Ram through various sale deeds as shown in site plan Ex.DW1/1 has been filed. PW4 Heera Singh Kanungo proved his demarcation report as Ex.PW4/1 cannot be looked into since he had conducted demarcation at the back of defendants no.7 to 9, it is a trite law that the plaintiff has to prove his case for a decree of declaration. So the plaintiff cannot be allowed to seek assistance of Court for demarcation of the property for claiming a decree of declaration, possession and injunction against defendants no.7 to 9 who had purchased area of land in years 1978 & 1979 and after sanctioning of site plans had constructed houses without any protest by the plaintiff and her husband. After lapse of about 12 to 16 years the plaintiff had preferred the present civil suit on 12.10.1995. Therefore, the claim of the plaintiff is barred by principles of estoppel and limitation. As such, the arguments of learned counsel for appellant are untenable. The findings of learned trial Court on issues no.1 & 2 as well as 4, 5, 8 & 10 are sustainable. Accordingly, point of determination is decided against the appellant. No reasons for adducing additional evidence have been given. Application for impleading LRs of

respondent/defendant no.2 Harbo Devi is barred by period of limitation.”

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

10.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No