

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 4371 of 2019 (O&M)
Date of Decision: 31.10.2019**

Smt. Sunita

---Appellant

versus

Sunil Adhana and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sushil Jain, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction restraining the defendants-respondents from interfering in construction work and peaceful possession in respect of the suit land i.e. Plot No. 103 whole and part of plot No. 102 out of khasra numbers, detailed in para 2 of the judgment of trial court, was dismissed vide judgment and decree dated 17.11.2016 that came to be affirmed in appeal by the Additional District Judge, Faridabad, vide judgment and decree dated 2.8.2019.

The plea of appellant-plaintiff is that she purchased the disputed plot vide sale deed registered on 13.8.2010 for sale consideration of Rs. 4,80,000/-. She started construction over the plot and has done construction. The respondents-defendants illegally, forcibly, without right, title and interest are adamant to stop construction work of the plaintiff.

Hence the suit.

The respondents-defendants filed the written statement and material averments raised therein are noticed by the trial court in para 3 of the judgment of said court.

The appellant-plaintiff filed the suit through special attorney Birender Singh son of Sh. Tula Ram. The trial court has noticed that nothing has been mentioned in the deed of attorney as to what was the necessity to execute this special power of attorney in favour of Birender Singh. It has further been noticed that two documents marked as Exs. P8 and P9 reveal that land in question has been purchased by Bijender Singh from Sunita Devi on the basis of full and final payment agreement and possession of the same was handed over to him on 24.1.2011 whereas the suit was instituted by Sunita Devi through Birender Singh on 27.1.2011.

Counsel for the appellant would argue that as the agreement dated 24.1.2011 has not fructified in sale in favour of Bijender Singh, Sunita Devi continued to be owner of suit land and is entitle to file suit for injunction. Another submission made by counsel is that recital in agreement Ex. P8 with regard to delivery of possession would not cause prejudice to entitlement of Sunita Devi to seek injunction against interference in construction and peaceful possession of the suit property.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

Perusal of findings of the trial court, in para 11 of the judgment, leaves no manner of doubt that this litigation was actually initiated by Bijender Singh as Sunita Devi had already lost her interest in the suit land,

in view of documents Ex. P8 and P9. For that reason, no specific reasons have been spelt out in the special power of attorney for appointing Birender Singh as attorney to file the instant suit. No such plea has been raised in the suit that recital in document Ex. P8 with regard to delivery of possession to Bijender Singh is incorrect or Sunita Devi continued to be in possession of the suit property despite executing agreement of sale in favour of Bijender Singh. Document Ex. P8 has been relied upon by the appellant and she possibly cannot wriggle out of the same. As Sunita Devi had already delivered possession in favour of Bijender Singh on the basis of agreement Ex. P8, the courts have rightly held that appellant-plaintiff is not entitled to discretionary and equitable relief of injunction nor can she be heard to say that the contesting defendants are trying to interfere in her peaceful possession or construction on the plot in question. The suit filed by the appellant is liable to be dismissed on this score alone and has rightly been ordered so by the courts.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to right of Bijender Singh in his individual capacity to seek appropriate remedy, in accordance with law.

(Rekha Mittal)
Judge

31.10.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No