

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. RSA No. 4113 of 2013 (O&M)
Date of Decision : 09.01.2019**

Kirti Sharma and anotherAppellants

Versus

Dinesh Sharma and othersRespondents

2. RSA No. 467 of 2017 (O&M)

Kirti SharmaAppellant

Versus

Pushpa and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Johan Kumar, Advocate
for the appellants in both the appeals.

Mr. Rajpal Singh Chauhan, Advocate
for respondent no. 2 in RSA-4113-2013.

Surinder Gupta, J.

RSA No. 467 of 2017

Appellant-Kirti Sharma filed suit seeking the relief of
declaration and permanent injunction as follows:-

*“.....that the sale deed bearing no. 11326 dated
04.01.2005 executed by Hari Mittal Aggarwal in favour of
Santosh Kumar Sharma i.e. defendant no. 3 and the sale
deed no. 2674 dated 30.04.2008 executed by Santosh Kumar
in favour of defendant no. 1 are totally null and void, sham
documents and liable to be cancelled and the defendants
and their attorneys, authorized representatives and agents*

may kindly be restrained from encroaching upon the suit property and be also restrained from dispossessing the plaintiff and her family members forcibly and a decree of declaration and as a consequential relief of a permanent injunction may kindly be passed in favour of plaintiff and against the defendants.”

2. Learned Civil Judge (Jr. Division), Faridabad declined the relief of declaration as sought by the plaintiff. However, the suit was partly decreed to restrain the defendants from interfering into possession of plaintiff over the suit property except in due course of law. In appeal filed by respondent no. 1-Pushpa (in RSA-467-2017) purchaser of the suit property, judgment and decree passed by Civil Judge (Jr. Division), Faridabad was set aside and suit of the plaintiff was ordered to be dismissed.

3. Learned counsel for the appellants has argued that Hari Mittal Aggarwal was original owner of the suit property bearing no. 727, Sector 21-A, Faridabad. He executed a power of attorney and Will dated 29.08.1996 pertaining to this house in favour of K.K. Sharma, husband of appellant, then on 04.01.2005 executed a sale deed of the disputed house in favour of S.K. Sharma (not a party to the suit), who is father of K.K. Sharma and father-in-law of plaintiff-appellant (Kirti Sharma). K.K. Sharma being attorney of Hari Mittal Aggarwal also executed sale deed dated 13.01.2006 of the disputed house in favour of plaintiff-appellant (his wife). S.K. Sharma sold the suit property vide sale deed dated 30.04.2008 to defendant-respondent no. 2-Madhu Bala (in RSA-467-

2017).

4. Learned Civil Judge (Jr. Division), Faridabad observed that firstly sale deed dated 13.01.2006 executed in favour of plaintiff-appellant was not produced on file and even if any such sale deed was executed, the same was not valid document in view of execution of sale deed dated 04.01.2005 by owner of the suit property in favour of S.K. Sharma. Keeping in view the fact that none of the defendant had appeared in the witness-box, statement of plaintiff-appellant that she is in possession of the suit property was relied and the relief of permanent injunction to restrain defendants from interfering in possession of plaintiff except in due course of law was allowed.

5. Ist Appellate Court took note of the fact that possession of the suit property was delivered to Madhu Bala at the time of execution of sale deed dated 30.04.2008 and she became owner of the suit property. Even otherwise, plaintiff-appellant has no *locus standi* to claim possession over the suit property, which was alleged to be owned by S.K. Sharma, her father-in-law, as per sale deed dated 04.01.2005.

6. In connected appeal, which also pertains to suit property (RSA-4113-2013), learned counsel for appellants and learned counsel for respondent no. 2 have admitted that as per sale deed dated 04.01.2005, S.K. Sharma was owner of the suit property. However, under a family settlement, suit property has been given to K.K. Sharma, husband of plaintiff-appellant (Kirti Sharma) and ownership of K.K. Sharma has also been recorded in the record of Haryana Urban Development Authority (HUDA).

7. Learned counsel for appellants in both the cases is the same and if submission of learned counsel for the appellant in RSA-4113-2013 be believed, appellant-Kirti Sharma has no concern with the suit property whatsoever. At the most her husband can come up to claim possession of the suit property.

8. It has also been argued that sale deed executed by S.K. Sharma in favour of Madhu Bala was set aside in civil suit filed by K.K. Sharma and application seeking setting aside of *ex parte* decree filed by Madhu Bala is pending.

9. Once it is admitted that sale deed dated 13.01.2006 in favour of husband of appellant-Kirti Sharma is not a valid document, he or appellant are conferred with no right, title and interest with regard to suit property, as such, Ist Appellate Court committed no error while declining plaintiff the relief of injunction as sought by her. I find no merit in the appeal (RSA-467-2017) filed by Kirti Sharma, calling for any interference in the judgment passed by Ist Appellate Court.

RSA-4113-2013

10. Kirti Sharma and K.K. Sharma filed suit seeking the relief of declaration that sale deed dated 04.01.2005 executed in favour S.K. Sharma, father of plaintiff-appellant (K.K. Sharma), is illegal, null and void. During course of arguments it has, however, been conceded that sale deed dated 04.01.2005 regarding the suit property executed by Hari Mittal Aggarwal, the original owner, in favour of S.K. Sharma has preceded sale deed dated 13.01.2006, executed by K.K. Sharma as attorney of Hari Mittal Aggarwal in favour of his wife Kirti Sharma, as

such, sale deed in favour of S.K. Sharma is a valid document.

11. At this stage, learned counsel for appellants and learned counsel for respondent no. 2-S.K. Sharma (in RSA-4113-2013) have submitted that during pendency of this appeal the matter has been amicably settled with S.K. Sharma, who has conferred title of the suit property in favour of K.K. Sharma (appellant no. 2) and transfer of suit property in favour of K.K. Sharma has also been reflected in the record of HUDA. Learned counsel for appellants has argued that as the matter has been amicably settled between the parties the appeal filed by appellants be allowed.

12. The settlement in between K.K. Sharma (appellant) and respondent no. 2-S.K. Sharma, if any, is not binding on the other parties to the suit. The same binds the parties to settlement only and in particular has no effect on the alienation made by S.K. Sharma to Madhu Bala and subsequent alienation made by Madhu Bala. Even as per settlement, if any, sale deed executed by S.K. Sharma dated 30.04.2008, cannot be declared as illegal, null and void. After execution of this sale deed S.K. Sharma was left with no right, title or interest in the suit property entitling him to settle the same with his son K.K. Sharma.

13. As a sequel of my above discussion, the appeal (RSA-467-2017) filed by Kirti Sharma has no merit and the same is dismissed.

14. In appeal (RSA-4113-2013) though, appellants and respondent no. 2 have alleged settlement regarding the suit property but the same will bind the parties to the settlement and will not effect the right of Madhu Bala, who purchased the suit property and her subsequent

vendee. Sale deed dated 04.01.2005 is admitted to be a valid document and appellant no. 2-K.K. Sharma alleged to have derived right *qua* this property from his father S.K. Sharma on the basis of above sale deed. Consequently, he loses right to seek declaration that this sale deed is illegal, null and void. This appeal also has no merit and the same is dismissed.

January 09, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No