

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

RSA No.3861 of 2016 (O&M)

Date of decision:21.01.2019

Manju Seth

... Appellant

Vs.

Subhash Narang (since deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.S.Lalli, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.10018-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 111 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.3861 of 2016 (O&M)

The appellant-plaintiff has not been successful in claiming declaration to be owner and in possession of house no.61 situated in Modern Colony Jalandhar alongwith defendants no.2 to 4 challenging the ejectment order obtained by defendant no.1 against Dr. Ashok Kaushal son of late Bhawan Dass Kaushal with a further prayer for permanent injunction restraining defendant no.1 from forcible dispossession.

It was alleged that Sushila Kaushal, wife of Bhagwan Dass Kaushal, mother of the plaintiff and predecessor in interest of defendants no.2 to 4 was allotted the aforementioned plot by a Society known as Modern Housing and Construction Co-operative Society, Jalandhar. She died intestate and on her death, the property devolved upon the plaintiff and defendants no. 2 to 4 on the basis of natural succession. It was also alleged that Sushila Kaushal had entered into an agreement to sell dated 10.09.1980 which during her life time was challenged but was not successful. However, she unfortunately died on 01.11.2004.

Defendant no.1 contested the suit by terming the agreement to sell to be a total sale consideration of Rs.1,50,000/-. Even transfer of the plot was effected by the Society and the suit was said to be not maintainable for want of non-joinder of necessary party. The ejectment order was obtained from the competent Court of law and could not have been set aside in the manner and mode as it attained the finality upto the Hon'ble Supreme Court.

Mr.H.S.Lalli, learned counsel appearing on behalf of the appellant-plaintiff submitted that contesting defendant no.1, Subhash Narang, did not claim any specific performance of the agreement to sell and therefore, could not have conferred the ownership. The sale consideration has also not been proved. On demise of Sushila Kaushal, without any testamentary document, the plaintiff and defendants no.2 to 4 were required to be recorded in the column of co-ownership and joint possession.

I am afraid the aforementioned argument is not sustainable as the executor of the agreement to sell, Sushila Kaushal during her life time was not successful in laying challenge to the agreement to sell dated 10.09.1980. Even there is no challenge to the transfer or any relief of separate possession nor any Society had been impleaded which could have cleared the facts either by supporting defendant no.1 or plaintiff. Once the executor failed to get the agreement to sell set aside, the legal representatives cannot be permitted to invoke the jurisdiction of the Court under Section 9 of Code of Civil Procedure.

The judgments and decrees under challenge, in my view, cannot be said to be suffering from illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 21, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No