

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1157 of 2018

Date of Decision : 15.10.2019

Dilbagh Singh and another

.....Appellants

Versus

Asha Rani

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Jagjit Singh, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 30.09.2016, for, even the appeal preferred against the said decree failed and was dismissed on 17.02.2017, the defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for injunction restraining and preventing the defendants, their agents and assignees from interfering in her peaceful possession i.e. 1/9 share in the land bearing Khewat No.14, Khatauni No.17, Khasra No.69, total land measuring 1 kanal 18 marlas i.e. 4 ¼ marlas.

In brief, the case set out by her was that she had purchased the suit land from Satya Devi, pursuant to a registered sale deed dated 03.05.2012, for a sale consideration of Rs.1,66,500/-. In fact, Satya Devi along with others had earlier agreed to sell the land measuring 4¼ marlas to Bachan Lal i.e. husband of the plaintiff and a site measuring 8 marlas and 4

sarsai to one Babu Ram. The possession of the said plots were accordingly delivered to the husband of the plaintiff as also to Babu Ram. Though, Babu Ram constructed a house upon the said site, whereas husband of the plaintiff used the plot purchased by him as haveli. Subsequently, even he constructed two rooms and a boundary wall. The said plot has been in possession of the plaintiff pursuant to an agreement dated 29.01.1989, and thereafter the sale deed dated 03.05.2012. As the defendants threatened to cause interference in the peaceful possession of the plaintiff, thus the suit.

In defense, the defendants denied if the plaintiff had purchased any specific portion out of the suit land. It was also denied if the plaintiff ever entered possession over any part of the haveli thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that plaintiff Asha as also Charan Dass (defendant No.2) and others were recorded to be joint owners of khasra No.69/1-18. Gurdev Raj (DW1) and Charanjit Singh (DW2) conceded in their cross-examination that construction had since been raised by all the co-sharers at the spot and there was no vacant area left in the joint khata. The specific case set out by the plaintiff was that she was in exclusive possession of the disputed portion since 1989 and the agreement to sell (Ex.P1) and sale deed Ex.P2 executed in favour of the plaintiff showed that a specific portion was sold to the plaintiff. Agreement to sell Ex.P1 showed that the disputed portion was bounded on all the four sides. Further, depiction of the boundaries in the agreement to sell Ex.P1 corroborates the testimony of the witnesses examined by the plaintiff.

Although, the defendants claimed the disputed portion i.e. haveli to be in their possession but none of the defendants appeared as witness in support of their claim. Rather to the contrary Gurdev Raj (DW1) and Charanjit Singh (DW2) testified in their deposition that Satya Devi, vendor of the plaintiff's husband to be a co-sharer in khasra No.69, and the entire number had since been developed as abadi. Further, if defendants were already in possession of specific portion out of the joint holding to the extent of their share there was no occasion to interfere in possession of the other co-sharers. Accordingly, the defendants were enjoined from dispossessing the plaintiff from any part of the suit property shown with letters ABCD in the site plan Ex.P3. However, it was observed that it would not entitle the plaintiff to claim any preferential right to retain possession of the disputed portion as the existing arrangement qua possession would be subject to partition.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

15.10.2019

*Manoj Bhutani***(ARUN PALLI)**
JUDGEWhether speaking/reasoned
Whether reportableYes/No
Yes/No