

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

RSA No. 1637 of 2018 (O&M)

Date of decision : January 31, 2019

Chandan Verma and another

.....Appellants

Versus

Smt. Savitri Devi and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Mohammad Arshad, Advocate
for the appellants.

LISA GILL, J.

Appellant – defendants are aggrieved of judgment and decree dated 09.03.2015 passed by the learned Civil Judge (Junior Division), Gurgaon as well as judgment and decree dated 16.02.2018 passed by the learned Additional District Judge, Gurugram, whereby suit for permanent injunction restraining the defendant – appellants from interfering in the possession of the plaintiff over the suit property has been allowed. Relief for mandatory injunction has, however, not been passed in favour of the plaintiffs.

Brief facts necessary for the adjudication of the case are that the plaintiffs – respondents filed a suit for permanent injunction as well as mandatory injunction against the defendants. It was pleaded that plaintiff – respondent No. 1 Savitri Devi was the owner of residential plot measuring 72.5 square yards as detailed in the plaint. Plaintiff No. 1 entered in an agreement to sell dated 11.05.2011 in favour of the plaintiff – respondent No. 2 - Krishna Devi. Total sale consideration was received by the first plaintiff. Possession of the plot in question was handed over to plaintiff No.

2 on 11.05.2011 itself. Plaintiff – Savitri Devi was claimed to be the registered owner and plaintiff No. 2 in possession of the plot in question. Plot was stated to be purchased by Savitri Devi initially from Nirmala Devi wife of Kirpa Ram through defendant No. 1 i.e. General Power of Attorney holder of Nirmala Devi. Possession of the plot was handed over to plaintiff No. 1. It was stated that the defendants have no right, title or interest in the plot in question in any capacity. They were threatening to take possession of the plot in an illegal and forcible manner. Hence, the suit was filed.

Respondent – defendants contested the suit while denying all the averments in the plaint. It was denied that plaintiff No. 1 is the owner of the plot in question. Plaintiff No. 1 entered into an agreement dated 14.09.2009 with defendant No. 1 to sell the plot in question for sale consideration of ₹9,60,000/- and received the total sale consideration. The possession of the plot was already with defendant No. 1. Plaintiff failed to perform her part of the agreement. She neither had the sale deed executed nor refunded the amount of total sale consideration. Defendant No. 1 served a legal notice upon her. It was further pleaded that plaintiff No. 1 has no right to enter into an agreement with plaintiff No. 2. Agreement dated 11.05.2011 executed by plaintiff No. 1 in favour of plaintiff No. 2 is wrong, illegal, ineffective and not binding upon defendant No. 2. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiffs are entitled to a decree for permanent injunction or alternatively for mandatory injunction as prayed for on the grounds taken in the plaint? OPP.
- ii) Whether suit is not maintainable in the present form? OPD.
- iii) Whether the plaintiffs have no locus standi and cause of

action to file the present suit? OPD.

iv) Whether the plaintiffs have suppressed the true and material facts and not come to the court with clean hands? OPD

v) Whether the plaintiffs are estopped from filing the present suit by their own acts and conduct? OPD

vi) Relief.

Evidence was led by both the parties.

Learned trial Court concluded that the plaintiffs had successfully proved their possession over the suit property. Complaint filed by the defendants before the police authorities regarding taking of forcible possession of the suit property was found to be false. It was concluded that the plaintiffs had successfully proved their possession over the suit property. Suit was decreed and permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiffs and taking forcible possession of the plot in question was afforded. Appeal filed by the appellants was dismissed by the learned Additional District Judge, Gurgaon vide judgment dated 16.02.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that agreement to sell dated 14.9.2009 (Ex.D4) had been entered into by Savitri Devi with defendant No. 1 for a total sale consideration of ₹9,60,000/-. She had received a total sale consideration of ₹9,60,000/- from the plaintiff. Plaintiff No. 1 had agreed to execute and have the sale deed registered upto 14.02.2010 in favour of defendant No. 1 and in the alternate refund the amount to defendant No. 1. Plaintiff No. 1 failed to perform her part of the agreement. A suit for specific performance was filed on the basis of the said agreement. Possession of the property in question had been handed over to defendant No. 1 by Savitri Devi. Plaintiff No. 1, it is submitted, had no right

to execute the subsequent agreement to sell dated 11.05.2011 in favour of plaintiff No. 2. Suit for specific performance of agreement to sell dated 14.09.2009 (Ex.D4) was filed by defendant No. 1 on 09.07.2011. Both the plaintiffs, it is submitted, are party to the said suit. The plaintiffs had taken forcible possession of the property in question from the defendants. Suit filed by the plaintiffs has been wrongly decreed. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 09.03.2015 passed by the learned Civil Judge (Junior Division), Gurgaon as well as judgment and decree dated 16.02.2018 passed by the learned Additional District Judge, Gurugram be set aside.

I have heard learned counsel for the appellants and have perused the file with his able assistance.

Plaintiffs – respondents, in this case, have sought the relief of permanent injunction restraining the defendants from interfering in their peaceful possession of the plot in question and from encroaching thereon or raising any sort of construction. In the alternate, it is prayed that in case the defendants succeed in taking forcible possession of the property in question, a decree for mandatory injunction directing the defendants to remove their illegal construction and hand over vacant possession be afforded to the plaintiffs. It was incumbent upon the plaintiffs to prove their possession which has in fact been duly proved by the evidence on record. Stand of the defendants in their written statement is that defendant No. 1 is in possession of the suit property running, a school in the name and style of 'Luck Public Middle School'. Testimony of appellant No. 1 – Chandan Verma who testified as DW1 is telling. His affidavit is Ex. DW1/A. DW1 has not deposed that he is running the said school over the suit property. It is in fact

admitted by DW1 that possession of the suit property was taken by the plaintiffs on 06.06.2011, albeit forcibly. The present suit was filed on 27.07.2011. It is a matter of record that documents Exs. P5 to P8 indicate that the complaint made by defendant No. 1 in respect to the taking of forcible possession of the suit property by the plaintiffs was found to be false by the police authorities on investigation. It is rightly observed by learned trial Court that DW1 never deposed about the forcible dispossession of defendant No. 1. Possession of the plaintiffs over the property in question stands proved on the basis of the evidence on record. In this situation, it cannot be said that the suit filed by the plaintiffs has been wrongly decreed by the learned courts below.

Suit filed by the present appellant – defendant No. 1 seeking the relief of specific performance of agreement to sell dated 14.09.2009 (Ex.D4) purportedly executed by plaintiff No. 1 in his favour has admittedly been dismissed by the learned trial Court though an appeal against the said verdict is pending before the learned first appellate Court, which doubtlessly has to be decided on the basis of the facts and evidence in the said proceedings, to which the present appellant No. 1 is stated to be a party. Needless to say the said proceedings would be adjudicated upon independently. Present proceedings only deal with the question of the right of the plaintiffs to the decree of permanent injunction for protecting their possession over the suit property.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 09.03.2015 passed by the learned Civil Judge (Junior Division), Gurgaon as well as judgment and decree dated 16.02.2018 passed by the learned Additional District Judge, Gurugram which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

January 31, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No