

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 5550 of 2019 (O&M)

Date of decision : December 13, 2019

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Mamta

.....Appellant

Versus

Shri Jainendra Gurukul, Panchkula

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Anilenendra Pandey, Advocate for the appellant.

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RITU BAHRI, J.

CM No.15794-C of 2019

Prayer made in the application is for condonation of 87 days delay in filing the present appeal.

For the reasons mentioned in the application, the delay of 87 days in filing the present appeal is hereby condoned. C.M is allowed.

RSA No. 5550 of 2019

The appellant-defendant (hereinafter referred to as 'the defendant') has come up in appeal against the judgment dated 31/05/2017 passed by the Civil Judge (Junior Division), Panchkula and against the judgment dated 12/04/2019 passed by the Additional District Judge Panchkula, whereby the appeal filed by the appellant-defendant against the judgment of the trial court was dismissed. Vide the judgment of the trial court dated 31/05/2017, the suit filed by the respondent-plaintiff (hereinafter referred to as 'the plaintiff') seeking relief of physical

possession of the suit land was decreed in favour of the plaintiff. By way of the said suit, the plaintiff had also sought recovery of mesne profits (with effect from 01/04/2008) @ Rs. 3000 per month till delivery of possession of the suit property. Vide the judgment passed by the trial court, the defendant was directed to vacate the suit property within 2 months. The respondent-plaintiff was also held entitled to recover mesne profits @ Rs. 700/- per month from 01/04/2008 till delivery of possession of the suit land from appellant-defendant.

The case set up by the plaintiff was that the plaintiff was the owner and was in possession of the suit land which was illegally encroached by the defendant in 2008. Defendant raised unauthorized construction over the suit land. Further, whenever the employees of the plaintiff went to the defendant to demand possession, she hurled abuses and threatened that she would implicate the plaintiff and its functionaries in false criminal cases. Further the case of the plaintiff was that the status of the defendant was that of a trespasser since 2008 and she was liable to pay mesne profits for illegal use and unauthorized occupation of the suit property @ Rs. 3000/- per month w.e.f. 01/04/2008 till delivery of possession of the suit property. As the defendant refused to accede to the request of the plaintiff regarding delivery of possession of the suit property, hence the suit was filed.

Upon notice of the suit, the defendant appeared and filed written statement taking the plea that the suit has been filed by an unauthorized person. Further in 1998-99, the land was acquired by the State of Haryana, an award was passed which mentioned the name of defendant as occupant of property in dispute. It was also mentioned therein that

Gurukul is not the owner. Further Gurukul authorities had lodged an FIR

against the defendant alleging trespass, however, defendant had been acquitted in the criminal trial. It has been further submitted that the house had been constructed out of her own funds by spending lakhs of rupees and she was not an unauthorized occupant.

From the pleadings of the parties, following issues were framed by the trial court:-

1. *Whether the plaintiff is entitled for relief of mandatory injunction directing the defendant to vacate and hand over physical possession of entire property measuring 284.75 square feet comprised in Khasra No. 161 situated in village Kharak Mangoli where he has raised unauthorized construction and also to pay future mesne profits at the rate of Rs. 3000 per month w.e.f 01/04/2008 for the illegal use and occupation of property in question as claimed? OPP*
2. *Whether the suit of the plaintiff is hopelessly time-barred? OPD*
3. *Whether the plaintiff has no cause of action to file the present suit? OPD*
4. *Whether the plaintiff has no locus standi to file the present suit? OPD*
5. *Whether the plaintiff has not come to the court with clean hands? OPD*
6. *Whether the plaintiff has concealed the true and material facts from the court? OPD*

Issue No. 1 to 6 were taken up together by the trial court. The plaintiff examined PW-1 V.K Jain, who tendered his affidavit Ex. PW1/A in his examination in chief where under he reiterated the stance taken in the plaint. He relied on documents Ex. P-1 to Ex. P-4 in his examination in chief. PW-2 Karamvir Singh (office of District Registrar, Firms and Society) stated that he brought with him the relevant record regarding registration of Sh. Jainendra Gurukul, Panchkula. He stated further that Ex. P-1 was issued by the office of Registrar, Firms and Societies. Ex. P-1 is correct as per the original record. He stated further that Ex. P-5 is also correct as per the original record. As per Ex. P-1, plaintiff-society was registered at Lahore in the year 1945 when Lahore was part of India and Ex. P5 is the revised certificate of registration and the same bears certification to the effect that “Sh. Jainendra Gurukul” had been registered vide registration number 4 on 6.4.1945 that it had been allotted a new registration number on 22.5.2013. On the basis of the above said documents, the plaintiff claimed being owner of the land. The plaintiff also placed on record Jamabandi which showed ownership of the plaintiff regarding the suit property. In response to the above said documents, defendant did not lead any evidence to show that the land in dispute was ever owned by the gram panchayat. The defendant witness DW1 in cross-examination stated that the defendant (his wife) had instituted a suit seeking electricity connection over disputed property and that suit was dismissed vide judgment dated 01/08/2014. The Gurukul was party to the suit. This witness further conceded in his cross-examination that the court had held that keeping in mind the deposition of witnesses and Jamabandi, Shri Jainender Gurukul was owner of disputed land. This witness also conceded in his cross-examination that the appeal against the

aforesaid order was dismissed by the court of Additional District Judge, Panchkula vide judgment dated 04/03/2015. The trial court further observed that even in the judgment dated 04/03/2015, the defendant nowhere stated that prior to occupation of the house by her, either it was owned or possessed by any particular person or how she came into its possession later on. It was not her case that she was inducted as a tenant by any of the landlord. It was also not her case that she had purchased the same from someone. Mere issuance of domicile certificate and the ration card Annexure P-1 Annexure P-2 respectively by the authorities concerned does not mean that they ever legalised her possession over the house. At the same time, in that suit in her affidavit Ex. PW1/A, she had stated the possession of the house in dispute was delivered to her by Kharaiti Lal, Sarpanch and another person Kranti Prasad. However in her complaint, she nowhere mentioned about this fact. Finally vide the trial court judgment Ex. D-1 dated 06/10/2007, she had been acquitted of the charge of trespass by giving her the benefit of doubt. The benefit of doubt was given keeping in view that there was no evidence that she had broken the lock of the house and forcibly entered into the house. It was observed by the trial Court that acquittal in a criminal trial would not establish her legal possession over the suit property. The trial court decreed the suit of the plaintiff keeping in view Annexures P-1 & P-5 and the Jamabandi i.e where ownership of the land in favour of the plaintiff stood duly proved. The certificates P-1 and P-5 issued by the registrar of firms and societies are proved by examining witness PW 2 who had come from the office of District Registrar (Firms and Societies). Hence the suit of the plaintiff has been decreed by the trial court by returning a finding based on registration of the society at Lahore and fresh

registration Ex.P-5 as no evidence was led by the defendant to show that these two registration certificates were result of fraud. The appeal filed by the defendant has been dismissed by the lower appellate court on 12/04/2019 and findings of fact is recorded by the trial court had been affirmed. Thereafter a review application of the judgment dated 12/04/2019 was also dismissed by the order dated 13/08/2019 passed by the Additional District Judge, Panchkula.

The lower Appellate Court gave mesne profits at the rate of Rs.700/- per month w.e.f 01/04/2008. In paragraph 23 of the judgment of the lower appellate court it has been further observed that RSA No. 1200 of 2017 titled 'Lakshmi Devi versus Jainendra Gurukul', RSA No. 1210 of 2017 titled, 'Ashok Kumar versus Jainendra Gurukul' and RSA No.1215 of 2017 titled, 'Krishan Pal vs. Jainendra Gurukul' arising out of suits filed for eviction were dismissed by this Court vide judgment dated 04/12/2017. It has further been observed that the land in question along with other part of land of Shri Jainendra Gurukul was acquired and later on the same was released in favour of the plaintiff by the government of Haryana.

In view of all that has been discussed above, the findings of fact recorded by both the Courts below does not require any interference. As there is no illegality or infirmity in the judgments passed by the Courts below, the present regular second appeal is hereby dismissed.

December 13, 2019*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No