

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.3497 of 2018 (O&M)  
Date of Decision : 02.12.2019

Kela Devi

.....Appellant

Versus

Shashi Lata

..... Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr.Amit Kumar Goyal, Advocate for the appellant.

**ARUN PALLI, J. (Oral)**

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 10.04.2017 and as even the appeal preferred against the said decree failed and was dismissed on 05.01.2018, she is 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 the defendant from causing any interference in her peaceful possession over the suit property as described and shown in the site plan appended with the plaint and from alienating the same in any manner.

In brief, the case set out by her was that she was the owner in possession of the house in question measuring 383 S.Y, situated in Para Mohalla, near Jail, Rohtak. The suit property was purchased by her vide sale deed dated 06.01.1992, from Veer Singh and Smt. Gian Devi. Whereafter, she constructed a double storey house thereupon and a small

room on the third floor. Defendant happened to be her daughter-in-law. Her son had died in the year 2009 and post his death plaintiff allowed the defendant and her sons to live with herself in the suit property for some time. The defendant took advantage of the plaintiff's concern and affection and tried to get the suit property transferred in her name. She even illegally installed the electricity meter in her name though the electricity bills were always paid by the plaintiff. She even filed a suit against the plaintiff claiming herself and her sons to be the co-sharers in the suit property. The said suit was dismissed on 09.01.2014, and it was held that the plaintiff was the absolute owner of the suit property. The appeal filed by the defendant against the said decree was dismissed by the Appellate Court on 09.02.2015, but during the pendency of the appeal, the defendant left the suit property and shifted in house No.288/29B, Tara Nagar, Ram Gopal Colony, Rohtak. But as despite that defendant intended to forcibly dispossess the plaintiff, thus, the suit.

In the written statement filed by the defendant it was pleaded, inter alia, that suit property was purchased by her father-in-law namely Sh. Balwant Singh and her deceased husband. Further, ever since her marriage, for the past 21 years, the defendant was residing in the suit property along with her children, 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 claim of the plaintiff was that she was the owner in possession of the suit property and the defendant intended to forcibly dispossess her. And, to prove her claim she

relied upon the oral testimony of the witnesses examined by her as also the judgment and decree dated 09.01.2014, in Civil Suit No.451 of 2011, and the judgment and decree dated 09.02.2015, passed in Civil Appeal No.7 of 2014. Analysis of the evidence led by the plaintiff showed that suit property was registered in the name of plaintiff Kela Devi. It was not the case of defendant either that plaintiff was not in possession of the suit property. This position was even fortified from the documents Ex.P2, Ex.P3 and P6 to P8. As regards the issue if the plaintiff was still entitled to injunction: ex facie, the case set out by the plaintiff was that defendant had moved to another house and was no longer living in the suit property. However, she conceded in her cross-examination that defendant Shashi Lata along with her children were residing in the upper floor of the suit property in three rooms. Meaning thereby, the defendant along with her children was living in portion of the suit property since long. Undoubtedly, defendant admitted in her statement that she had another house in her name but the evidence on record proved that she all along was residing in the suit property. It was not the case of the plaintiff either that it was during the pendency of the present *lis* the defendant forcibly entered possession of portion of the house in question. At any rate, admission was the best evidence and none other than the plaintiff herself conceded that defendant was in possession of the suit property and she was living therein along with her children. Therefore, in the given circumstances, a decree for permanent injunction restraining the defendant from interfering in possession of the plaintiff could not be issued.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at 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.

02.12.2019

*Manoj Bhutani*

(ARUN PALLI)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |