

RSA No. 4128 of 2018 (O&M)

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

**RSA No. 4128 of 2018 (O&M)
Date of decision: 16.10.2019**

Suresh Kumar and another

... Appellants

Versus

Satyawanti Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Aayush Gupta Advocate,
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial court, vide judgment and decree dated 29.11.2016, and as even the appeal preferred against the said decree failed and was dismissed on 12.4.2017, 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.

Initially, the plaintiff filed a simplicitor suit for injunction restraining the defendants from interfering in her possession over a plot No. 382 measuring 337 sq. yards, situated at village Gandhi Sampla, Rohtak. However, despite the order of status quo granted by the court on 20.3.2012, locks on the main gate of the suit property were broken by the defendants. Thus, they not only violated the order of the Court but also forcibly entered possession of the suit property. Accordingly, the plaintiff amended the suit and prayed for a decree for possession.

In brief, the case set out by the plaintiff was that Nirmala wife of Bharat Bhushan, who was owner in possession of the suit property, had

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obtained Rs.1,50,000/- as loan from the plaintiff on 2.9.2004, and as security had put the plaintiff in possession of the plot in question. Nirmala died without repaying the loan amount and therefore, plaintiff continued to be in possession since 2.9.2004 and even raised construction thereupon. Nirmala was succeeded by her two sons, namely Pawan Kumar and Parveen Kumar, who executed a sale deed in favour of the plaintiff qua the suit property, whereupon she became owner of the said plot.

In defence, defendant No.1 pleaded, inter alia, that, in fact, the defendants were the owners in possession of the suit property, pursuant to an agreement to sell dated 25.4.2008, executed by Pawan Kumar and Parveen Kumar in favour of defendant No.1. Further, even earlier, an agreement dated 14.11.2006 was executed by Pawan Kumar and Parveen Kumar in favour of defendant No.2, after receiving the consideration of Rs. 1,50,000/- qua the suit property. Although, Pawan Kumar and Parveen Kumar had executed the sale deed in favour of the plaintiff, but they were not owners in the wake of the agreements dated 14.11.2006 and 25.4.2008.

In a separate written statement filed by defendant No.2, he merely reiterated the stand set out in defence by defendant No.1.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that concededly, Pawan Kumar and Parveen Kumar were owners of the suit property, and executed sale deed No. 1531 dated 22.12.2008 in favour of the plaintiff. On the contrary, the defendants predicated their claim on two agreements dated 14.11.2006 and 25.4.2008, executed by Pawan Kumar and Parveen Kumar. It is not disputed either that defendant No.2 filed a suit for specific performance of the agreement to sell dated 14.11.2006 against Pawan

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Kumar, which was decreed only qua an alternate relief of refund of Rs. 1,50,000/-. As regards agreement to sell dated 25.4.2008, propounded by defendant No.1, it could not be disputed that merely on the basis of the said agreement, defendant No.1 could not claim the title or ownership over the suit property. No evidence was led by the defendants either to show that they were in lawful or authorised possession of the suit property. That being so and the plaintiff having established her ownership, was entitled to the decree for possession. Upon being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the findings 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. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 16, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO