

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

RSA-934-2020(O&M)

Date of decision: 13.03.2020

Meena Devi

.....Appellant

Versus

Vinod Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Devinder Singh, Advocate for the appellant

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant has filed the present Regular Second Appeal against the findings of fact arrived at by the First Appellate Court below while reversing the judgment and decree passed by the learned Trial Court. The plaintiff filed a suit for permanent injunction restraining the defendant from interfering in her possession. The plaintiff claims to have purchased the property from Anil Kumar Jain vide sale deed dated 11.9.2014. The defendant contested the suit and pleaded that Anil Kumar Jain was not the owner of the property and therefore, the plaintiff has not acquired any title. It was further pleaded that the defendant had constructed a house on the said property and is living with his family. Learned Trial Court by placing reverse onus on the defendant, decreed the suit. However, the learned First Appellate Court on re-appreciation of evidence has found that the plaintiff has failed to prove that Anil Kumar Jain, his vendor was left with no right, title or interest in the

property. The Court has noticed that Anil Kumar Jain has already sold/transferred more than his share in the property. The findings arrived at by the learned First Appellate Court are extracted as under:-

“In present case, it is to be seen whether the vendor Anil Kumar, was having any alienable interest or not in the total land measuring 22 kanal 9 marla at the time of execution of sale deed Ex. P4. The said sale deed has been executed on 11.9.2014. The copies of mutations Ex. D6 to Ex. D19 show that earlier to execution of the sale deed Ex. P4, the vendor Anil Kumar has sold out his share in the land to various purchasers. Along with the mutations Ex. D6 to Ex. D19, the appellant-defendant also produced and proved the calculation Ex.D5 of the total land got alienated by vendor Anil Kumar prior to execution of sale deed Ex.P14. The said calculation Ex.D5 has not been rebutted nor proved as wrong and the same goes to show that land measuring 0 kanal 7 marla had been got alienated by vendor Anil Kumar in excess to his share in the total land. Meaning thereby, on the day of execution of sale deed Ex.P4, vendor Anil Kumar was having no title in the suit property to transfer the same further in favour of respondent-plaintiff. Once, the respondent-plaintiff has not acquired any legal and valid title in any portion of total property measuring

22 kanal 9 marla his suit for decree of permanent injunction has not been maintainable because she also has been stranger to the suit property being no title has been created in her favour by dint of sale deed Ex.P4 as on the day of execution of that sale deed, the vendor Anil Kumar was having no alienable interest in the suit property.

Another question comes whether decree of permanent injunction can be sought or not without claiming of title. Though it is settled proposition of law that decree of injunction can be sought only on the claim that certain party is in possession over disputed property but in case in hand the circumstances have been different. The respondent-plaintiff in present case has sought decree of possession being owner of suit property and in possession of the same, which has not been proved on record.

10. The findings of para No.18 of the impugned judgment and decree shows clearly that reverse burden has been applied by learned Lower Court. The respondent-plaintiff was required to prove her case without taking any benefit of weakness of the case of the appellant-defendant but the learned Lower Court took wrong approach by considering the

weakness of the case of appellant-defendant and thereafter to conclude that the respondent-plaintiff is entitled for decree of permanent injunction qua the suit property.”

Learned counsel for the appellant was repeatedly requested to draw attention of this Court to error in the aforesaid findings. He remained contended while submitting that the learned Trial Court had passed the judgment in favour of the plaintiff.

Since the learned counsel for the appellant has failed to draw the attention of the Court to any error in the findings of fact recorded by the learned First Appellate Court, hence, this Court does not find any good ground to interfere.

Dismissed.

13.03.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No