

102

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

**RSA No.512 of 2021 (O&M)  
Reserved on : 30.11.2022  
Date of Decision : 09.12.2022**

Kuldeep Kaur

....Appellant

VERSUS

Gurmeet Singh

....Respondent

**CORAM: HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Rakesh Kumar, Advocate for the appellant.

**ALKA SARIN, J.**

**CM-2895-C-2021**

This is an application for condonation of delay of 23 days in  
refiling the appeal.

For the reasons stated in the application, delay of 23 days in  
refiling the appeal is condoned.

CM stands disposed off.

**CM-2896-C-2021**

This is an application for condonation of delay of 06 days in  
filing the appeal.

For the reasons stated in the application, delay of 06 days in  
filing the appeal is condoned.

CM stands disposed off.

**RSA No.512 of 2021**

The present regular second appeal has been preferred against the judgments and decrees dated 29.11.2017 and 03.12.2019 decreeing the suit filed by the plaintiff-respondent for possession and permanent injunction.

As per the plaintiff-respondent, he is the owner of the suit plot as per sale deed dated 20.12.1999 and has constructed a shop on it. The defendant-appellant had filed a suit against the plaintiff-respondent claiming that she is owner in possession of the said shop which suit was decreed in her favour. However, the appeal of the plaintiff-respondent herein was accepted by the lower Appellate Court and the suit was dismissed. This decision was affirmed by this Court and the regular second appeal of the defendant-appellant herein was dismissed on 07.07.2006. Thereafter, the defendant-appellant filed a civil suit challenging the judgment of the lower Appellate Court and this Court which suit was also dismissed. The defendant-appellant herein withdrew her appeal against the said decision. The plaintiff-respondent herein filed an application under Section 144 CPC before the Trial Court which was dismissed while observing that *“in other words Section 144 CPC does not apply unless the property was lost in execution of decree or directly in consequence of that decree. However, petitioner could have sought possession under other relevant civil law”*. As such the present suit was filed.

In her written statement the defendant-appellant raised preliminary objections and denied that the plaintiff-respondent is the owner of the suit plot as claimed by him and averred that the sale deed dated

20.12.1999 is an outcome of fraud played by the plaintiff-respondent upon the defendant-appellant.

The Trial Court on the basis of the pleadings of the parties and evidence on the record decreed the suit. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-appellant which also came to be dismissed. Hence, the present regular second appeal.

Counsel for the defendant-appellant has contended that the Courts below have erred in decreeing the suit of the plaintiff-respondent. According to counsel, the plaintiff-respondent had failed to establish his ownership over the shop and the suit plot and that infact the shop was constructed by the defendant-appellant much before the execution of the sale deed dated 20.12.1999 whereas the plaintiff-respondent has claimed that he himself had constructed the said shop. It is contended that the sale deed dated 20.12.1999 is the result of fraud and misrepresentation.

Heard counsel for the defendant-appellant.

The sale deed dated 20.12.1999 was executed by the defendant-appellant in favour of the plaintiff-respondent. There is no plausible argument raised as to why the vendee should not enjoy the possession of the property purchased by him from the vendor. The plea regarding fraud raised by the defendant-appellant is without basis and has been negatived in the earlier round of litigation as has also been noticed by the lower Appellate Court. It was found by the lower Appellate Court that :

*“16. Further, it is not in dispute that the suit property is in possession of the defendant, as is also evident from copy of order Ex.P6, whereby the present plaintiff attempted to took possession of the suit property from*

*the defendant vide an application under section 144 of the Civil Procedure Code, which was dismissed with observations that the plaintiff can take the possession of the suit property by way of civil suit for possession. It was the reason, the plaintiff preferred the present suit. Otherwise, the entire oral evidence of the parties in lis is also speaking at volume that the defendant is in possession of the suit property, though that is ownership of the plaintiff. There is an affirmative suggestion to the plaintiff that in the months of May or June of 2000, the defendant got forcible possession over the suit property, and she is in illegal possession over the same. The defendant while facing the cross-examination with the admission of loss of previous rounds of litigation by her, has also admitted on record for the execution of sale deed Ex.P1, but with an implied-manner, as she has taken the contention of fraud, which could not be established by her.*

*17. So, considering the sale deed Ex.P1 and loss of previous rounds of litigation by the defendant qua that sale deed, the learned trial court has rightly observed that the suit of the plaintiff is well maintainable and the plaintiff is entitled to the possession of suit property from the defendant and it was obvious to grant the relief of permanent injunction to restrain the defendant from changing the shape of the shop in dispute. The*

*specifications of the suit property are same as that mentioned in the sale deed Ex.P1. Therefore, the learned trial court has rightly decided issue nos.1 to 3 in favour of the plaintiff and against the defendant and that findings of the learned trial court qua issue nos.1 to 3 are hereby affirmed.”*

Counsel for the defendant-appellant has raised the same pleas which have not been found to be favourable by the Courts below. No error of law committed by the Courts below has been highlighted by counsel for the defendant-appellant.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**09.12.2022**

Yogesh Sharma

**( ALKA SARIN )  
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO