

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

RSA-1433-2022

Date of decision : 08.09.2022

Savita Katyal

...Appellant

Vs.

Ramesh Katyal and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. H.S.Brar, Sr. Advocate with
Mr. Kanwal Goyal, Advocate for the appellant.

MANOJ BAJAJ, J.

Appellant (plaintiff) has filed this appeal to assail the judgment and decree dated 05.05.2022 passed by First Appellate Court in civil appeal No.200/2019, whereby it has upheld the judgment and decree dated 22.07.2019 passed by Additional Civil Judge (Senior Division), Panchkula, dismissing plaintiff's suit for separate possession, declaration, mandatory injunction with consequential relief of permanent injunction.

The brief facts of the case are that the plaintiff filed a suit for separate possession by way of partition in respect of House No.396, Ground Floor, Sector-8, Panchkula and also sought a declaration that transfer deed dated 29.02.2016 bearing registration No.2834 executed by Smt. Santosh Rani wd/of Late Dev Raj Katyal in favour of her son Ramesh Katyal son of Late Dev Raj Katyal (defendant No.1) is illegal, null, void and not binding on the rights of plaintiff and defendant Nos. 2 to 4 (sons and daughter, respectively of Late Dev Raj Katyal). As per pleadings, the suit property was purchased by

joint family consisting of plaintiff, defendant Nos.1 to 4 and their parents, namely, Dev Raj Katyal and Santosh Rani, respectively from joint family funds. The property was allotted in the name of Ramesh Katyal-defendant No.1 being eldest son in the family, and later it was transferred in the name of Santosh Rani in the year 1979. The plaintiff by utilizing his funds, constructed first floor of the suit property and started residing there, but subsequently he shifted to House No.852, Sector-27, Panchkula in the year 2010 and since then is residing there with his family members. Santosh Rani died on 31.08.2016 leaving behind her children-plaintiff, defendant Nos.1 to 4 and the plaintiff is not interested to keep the suit property as joint, but defendant No.1 asserted his absolute right in the property on the basis of transfer deed dated 29.02.2016. Since, the transfer deed was not signed by the plaintiff and defendant Nos.2 to 4, and Santosh Rani not being a person of fit state of mind was not competent to execute it, therefore, prayed that the same be declared null and void.

Apart from it, a decree for permanent injunction restraining defendant No.1 from en-cashing the FDRs belonging to Santosh Rani was also prayed for, and further a direction to defendant No.1 and defendant Nos. 7 to 9 (banks) to disclose the particulars of accounts held by Santosh Rani was also prayed. Lastly, the plaintiff prayed for a decree for permanent injunction restraining defendants from interfering in his possession over the first floor of the suit property.

The suit was contested by the defendants, who filed their separate written statements. The defendant Nos.1 and 4 in the joint written statement raised various preliminary objections relating to *locus standi*, concealment of facts, estoppel etc., and on merits, pleaded that the suit property was allotted by

Haryana Urban Development Authority on 19.08.1974 to defendant No.1, who was employed with Haryana Government and the entire price of the property was paid by the allottee through bank drafts. The stand of the plaintiffs that the property was purchased from joint family funds, which was subject matter of family settlement was also denied. The defendant No.1 out of respect and affection transferred the suit property in favour of his mother and no effort was put in by plaintiff or anyone else in raising construction. The claim of plaintiff residing at the first floor was also denied by defendant No.1, who pleaded that there is no construction on first floor except the roof. As per the averments in the written statement, Santosh Rani had executed transfer deed dated 29.02.2016 in favour of Ramesh Katyal, as she had disowned plaintiff and defendant Nos.2 and 3 by making a publication on 28.10.2015 in the newspaper. Santosh Rani had also executed a Will dated 05.01.2015 bequeathing the suit property in favour of defendant No.1, but during her life time, she applied for permission to transfer the house in favour of defendant No.1 and after permission, the transfer deed was executed. Thereafter, allotment letter dated 16.03.2016 (Ex.DW-3/4) was issued in favour of Ramesh Katyal. Plaintiff's stand that Santosh Rani was not in sound state of mind was also denied, as according to the defendant No.1, her mother was hale and hearty till she died on 31.08.2016 and prayed for dismissal of the suit. The defendant No.1 had also set up a counter claim to seek mesne profits @ ₹20,000/- per month and for further evicting him from the suit property.

The defendant Nos.2 and 3 filed their written statements by admitting the claim of plaintiff.

The other defendant Nos.5, 6 and 8 were proceeded against *ex*

parte on 26.09.2016, whereas name of defendant No.7 was struck off from the array of parties on 03.10.2017. Defendant No.9 (Syndicate Bank, Panchkula) had filed its written statement and pleaded that the plaintiff has not placed any material on record to show that any amount was ever deposited by Santosh Rani in their bank.

The trial Court after considering the pleadings, framed twelve issues and thereafter, the parties adduced their respective evidence. Upon considering the pleadings and evidence on record, the trial Court vide judgment and decree dated 22.07.2019 dismissed the suit.

Being dissatisfied with the said judgment and decree, the plaintiff approached the first appellate Court by way of an appeal bearing No.200/2019, and the same was also dismissed through the impugned judgment and decree dated 05.05.2022. Hence this regular second appeal.

Learned senior counsel for the appellant has argued that the Courts have erroneously placed reliance upon the photographs adduced in evidence by defendants (Ex.D-3 to D-19) to arrive at a conclusion that Santosh Rani was a person of sound mind, while upholding the validity of the transfer deed dated 29.02.2016 (Ex.DW-3/25). He submits that Smt.Santosh Rani, the mother of the plaintiff and other defendant Nos.1 to 4, was 91 years old when she died on 31.08.2016 and she was suffering from various ailments, thus the said transfer deed is surrounded by suspicious circumstances as her thumb impression were also taken by the defendant No.1 by taking advantage of her old age, therefore, the findings returned by the trial Court on Issue Nos.1 to 3 deserve to be set aside. Mr. Brar, learned senior counsel further argued that the property was allotted long back in the year 1979 and the sale price against allotment of the

property was paid from the joint family funds, therefore, the appellant who is widow of Naresh Katyal has share in the suit property. According to learned senior counsel, the appellate Court has also failed to appreciate the evidence on record, while upholding the judgment and decree passed by the trial Court. He prays that the impugned judgments and decrees passed by both the Courts deserve to be set aside.

After hearing learned senior counsel for the appellant and considering the evidence on record, this Court finds that the stand of the plaintiff that Santosh Rani was not in a fit state of mind to execute the transfer deed in favour of her elder son Ramesh Katyal is not proved by way of any evidence, much less any medical record. Merely because Santosh Rani died at the age of 91 would not be sufficient to presume the stand of the plaintiff that she could not have executed the transfer deed. Apart from it, during the course of hearing, it has not been disputed by learned senior counsel that originally the property in question was allotted in favour of Ramesh Katyal, who after sometime on his own transferred the same in favour of his mother. Mr. Brar, learned senior counsel, fairly states that the said transfer in the name of his mother carried in 1979 was never challenged by the plaintiff or anyone else, but he submitted that the dispute arose when claim made by the plaintiff was denied by defendant No.1.

Upon perusing the impugned judgment and decree passed by both the Courts, this Court comes to the conclusion that neither there is any evidence on record to prove that the suit property was initially purchased by defendant No.1-Ramesh Katyal by utilizing the joint family funds nor the first transfer by original allottee in favour of his mother was ever questioned by any

of his brothers or sisters. Thus, the finding that the transfer deed dated 29.02.2016 executed by mother in favour of her son (original allottee) is a validly executed instrument. The material findings returned by the trial Court and upheld by the first appellate Court are based upon proper appreciation of evidence and do not suffer from perversity, therefore, no interference is called for by this Court. The appeal does not involve any substantial question of law.

No other argument was raised.

Resultantly, finding no merit in this appeal, the same is hereby dismissed.

(MANOJ BAJAJ)
JUDGE

08.09.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No