

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

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RSA No.4227 of 2019 (O&M)

Reserved on : 08.12.2022

Date of Decision : 20.12.2022

Umed Singh & Anr.

....Appellants

VERSUS

Nathi

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K. Tripathi, Advocate for the appellants.

ALKA SARIN, J.

The present appeal has been preferred by the defendant-appellants against the impugned judgments and decrees dated 07.12.2017 and 01.08.2019 passed by the Trial Court and the lower Appellate Court respectively whereby the suit of the plaintiff-respondent was decreed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for possession and permanent injunction averring that he is owner of a residential house bearing no.31 measuring 100 square yards situated in village Dayal Pur, Tehsil, Ballabgarh, District Faridabad which was allotted to him by Haryana Housing Board vide allotment letter bearing No.3491 dated 10.10.1983. It was submitted that the plaintiff-respondent gave said house to his cousin sister namely Billo to reside where she resided till January 2013 when she arranged her own house and left the suit property. As per the plaintiff-respondent, in February 2013 the defendant-appellant No.1 tried to encroach upon the said house with the help of some unsocial elements and when the plaintiff-respondent made a complaint to the

local police they did not take any action. The defendant-appellant No.1 succeeded in dispossessing the plaintiff-respondent from the suit property in February 2015 and now the defendant-appellants were planning to reconstruct the suit property without the consent and permission of the plaintiff-respondent. Hence, the suit.

Joint written statement filed by the defendant-appellants wherein preliminary objections were raised. It was denied that the suit property was the ownership and in possession of the plaintiff-respondent. The stand taken was that the suit property was though allotted to the plaintiff-respondent but in 1985 he gifted it to his cousin sister, Billo @ Kela Devi. The defendant-appellant No.1 had purchased House No.131 from one Daya Chand and after some time the defendant-appellant No.1 and Billo @ Kela Devi exchanged houses i.e. House No.131 came to Billo @ Kela Devi and the suit property (House No.31) came to the defendant-appellant No.1. It was further the stand that even the instalments for the suit property were given by the defendant-appellant No.1 to the Housing Board Haryana. It was submitted that the defendant-appellant No.1 is residing in the suit property and is owner in possession thereof.

On the basis of the pleadings of the parties the followings issues were framed :

1. Whether the plaintiff is entitled for decree of possession whereby defendants be directed to handover peaceful possession of the suit property to him? OPP
2. Whether the plaintiff is entitled for a decree of permanent injunction whereby defendants be restrained

from interfering in the peaceful possession of the plaintiff? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiffs have no cause of action/locus standi to file the present suit? OPD

5. Whether the suit plaintiff is bad for suppressio-vari? OPD

6. Relief.

Vide judgement and decree dated 07.12.2017 the Trial Court, based on the pleadings of the parties and the evidence on the record, decreed the suit of the plaintiff-respondent. The Trial Court found that there was nothing on the record to prove that the plaintiff-respondent had transferred the suit property in favour of Billo @ Kela Devi and as such the plaintiff-respondent was entitled to it's possession. However, the relief of injunction was declined as the plaintiff-respondent was not in possession of the suit property. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-appellants which appeal was dismissed by the lower Appellate Court vide judgement and decree dated 01.08.2019. Hence, the present regular second appeal by the defendant-appellants.

It is argued by counsel for the defendant-appellants that the Courts below have illegally decreed the suit of the plaintiff-respondent. It is contended that the plaintiff-respondent had gifted the suit property to his cousin sister Billo @ Kela Devi who had thereafter exchanged it with House No.131 belonging to the defendant-appellant No.1. It is argued that the

plaintiff-respondent was having no right, title or interest in the suit property and ought not to have been granted the relief of possession.

I have heard learned counsel for the defendant-appellants.

The facts of the case show that both the Courts below have found that there was nothing on the record to show that the plaintiff-respondent had gifted the suit property to Billo @ Kela Devi. There is also nothing on the record to show that the defendant-appellant No.1 exchanged his House No.131 with the suit property (House No.31). No document is on the record to suggest any gift or exchange. The lower Appellate Court found that *“There is absolutely no cogent evidence, except the self serving statement made by DW1 Umed Singh to prove the gift of the suit property by the plaintiff to Kela Devi @ Billo. So much so, DW2 Ravinder @ Kallu, who is the son of Kela Devi @ Billo, admitted during cross-examination that Nathi had given the suit property to his mother Billo for residing only and not for the purpose of selling or transferring the same. Admittedly, Kela Devi @ Billo has expired. Defendant relied upon photo copy of an affidavit dated 04.07.2012 Mark DA purported to be executed by Smt. Kela, as per which suit property had been gifted to her by plaintiff Nathi in the year 1985. The original of Mark DA has never been brought on record. Even DW2 Ravinder, the son of Kela Devi, did not prove the said affidavit to have been executed by his mother”*. The counsel for the defendant-appellants has been unable to dislodge the concurrent findings of fact recorded by both the Courts below.

No other argument has been raised. In view of the discussion above, I do not find any illegality or infirmity in the impugned judgements and decrees. No question of law, much less substantial question of law,

arises in the present regular second appeal. The appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

20.12.2022

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