

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

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**RSA-1571-2020 (O&M)
Date of Decision : 08.08.2022**

Mishat Girdhar

...Appellant

versus

Raj Kumari and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kameshwar Gumber, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-4944-C-2020

This is an application for condonation of delay of 12 days in refiling the appeal.

For the reasons mentioned in the application, the same is allowed and delay of 12 days in re-filing the appeal is condoned.

CM stands disposed off.

RSA-1571-2020

The present regular second appeal has been preferred by the defendant No.(i)-appellant against the concurrent findings of both the Courts below decreeing the suit for mandatory injunction and recovery of damages filed by the plaintiff-respondent No.1.

The brief facts relevant to the present lis are that on 19.11.2013 the plaintiff-respondent No.1 filed a suit for mandatory injunction for a direction to her son-in-law Madan Lal Girdhar to vacate and handover possession of the house in dispute and also sought recovery of damages @

Rs.10,000/- per month towards use and occupation of the house in dispute. It was pleaded that the house in dispute was purchased by the plaintiff-respondent No.1 vide sale deed dated 08.02.2000. Her daughter, Renu Bala, was married to the defendant Madan Lal Girdhar and out of that wedlock she had given birth to two children. Renu Bala is stated to have died on 03.09.2010. During the life time of Renu Bala, she and her husband i.e. the defendant Madan Lal Girdhar, had requested the plaintiff-respondent No.1 to allow them to live in her house i.e. the house in dispute with an assurance that they would vacate the same as and when required. It was further the case set up in the plaint that after the death of Renu Bala the behaviour of the defendant Madan Lal Girdhar changed and when the plaintiff-respondent No.1 requested him to hand over the possession of the house in dispute he started putting off the matter on one pretext or the other. Hence the suit.

During the pendency of the suit the defendant Madan Lal Girdhar expired and his legal heirs (son, daughter and daughter-in-law) were brought on the record. They filed a written statement and counter-claim taking preliminary objections regarding no cause of action, maintainability of the suit, etc. It was further pleaded that house had been purchased and constructed by defendant Madan Lal Girdhar with his own funds. However, the sale deed was got executed by the plaintiff-respondent No.1 in her favour by playing a fraud. It was further the case that the defendants had been enjoying peaceful possession of the house in dispute for the past 14/15 years and hence the same had ripened into ownership. Counter-claim was filed for

a declaration to the effect that the defendants had become owners in possession of the house in dispute by way of adverse possession.

On the basis of pleadings of the parties, the following issues were framed by the Trial Court :

1. Whether plaintiff is entitled to the mandatory injunction as prayed for ? OPP
2. Whether the plaintiff is entitled to recover Rs.10,000/- per month for the use and occupation of the disputed house ? OPP
3. Whether the defendant/counter claimant have become owner by way of adverse possession of house in dispute as prayed for ? OPD
4. Whether the defendant/counter claimants are entitled to permanent injunction as prayed for ? OPP
5. Whether the suit is not maintainable in present form ? OPD
6. Whether the suit is not valued for the purpose of court fee and jurisdiction ? OPD
7. Whether the plaintiff is estopped by her own act or conduct from filing the present suit ? OPD
8. Whether counter-claim is not maintainable ? OPP
9. Relief.

The Trial Court decreed the suit of the plaintiff-respondent No.1

vide judgment and decree dated 22.05.2017. An appeal was preferred only by the defendant(i)-appellant (grandson of the plaintiff-respondent No.1) which appeal was dismissed vide judgment and decree dated 6.8.2019. The Courts below disbelieved the stand taken by the defendants that a fraud had been committed inasmuch as the ingredients of fraud were neither pleaded nor proved. The stand taken by the defendants that the sale deed was a forged and fabricated document was also rejected as no evidence was led qua the same. It was further held that the sale deed in favour of the plaintiff-respondent No.1 was a registered document and there was no evidence that the same was forged and fabricated. Qua adverse possession it was held that merely being in possession of the property for over 12 years would not constitute adverse possession to establish ownership.

Learned counsel for the defendant(i)-appellant would contend that the house in dispute was purchased benami in the name of the plaintiff-respondent No.1 since Madan Lal Girdhar was a drunkard and hence in order to protect the property the sale deed was got registered in the name of the plaintiff-respondent No.1. Learned counsel has further relied upon the testimony of DW-4 who stated that the consideration amount was paid by the defendant Madan Lal Girdhar.

Heard.

In the present case the plaintiff-respondent No.1 came to Court on the basis of a registered sale deed dated 08.02.2000 (Ex.P1). Though the stand taken by the defendants was that the said sale deed was forged and fabricated, however, the ingredients of fraud were neither pleaded nor

proved. It is trite that a person raising the plea of fraud needs to plead and prove its ingredients. In the present case, both the pleadings and the proof are woefully missing. As per the settled proposition of law, mere mentioning and using the word fraud/fraudulent is not sufficient to satisfy the test of fraud. Using the word fraud/fraudulent without any material particulars would not tantamount to pleading of fraud. **In Bishundeo Narain vs. Seogeni Rai [AIR 1951 SC 280]** it was inter-alia held that

“28. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4 of the Civil Procedure Code.”

Qua the plea that the defendants had become owners of the house in dispute by way of adverse possession it is to be noted that the defendants failed to bring on record any evidence which would show that their possession was hostile to that of the plaintiff-respondent No.1.

In view of the discussion above, I do not find any infirmity or illegality in the judgments and decrees passed by both the Courts below returning concurrent findings of fact in favour of the plaintiff-respondent No.1. No question of law, much less any substantial question of law, arises in the present appeal. The present regular second appeal is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

August 08, 2022
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(ALKA SARIN)
JUDGE

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