

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

RSA-102-2019 (O&M)
Date of decision: 03.03.2022

SHAKUNTALA DEVI

...Appellant

V/S

PERMILA VERMA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Parminder Singh Kanwar, Advocate,
for the appellant.
(Presence marked through video conference)

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ARUN MONGA, J.(ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 29.07.2015, as upheld by the learned First Appellate Court vide its judgment and decree dated 04.09.2018.

3. Briefly stated, facts as noticed by Courts below are that plaintiff alleged that she along with her family members are residing in the house in question and the same was purchased by her before 07.02.2011 from defendant No.1 who had received Rs.3,00,000/- from the plaintiff in presence of the witnesses and handed over the possession of the said house to plaintiff. Plaintiff had spent an amount of Rs.3,50,000/- for its maintenance and installed an electric connection in her name and was paying the electricity bill. On 17.03.2012, defendants forcibly trespassed into the house of the plaintiff and threatened to dispossess them. Hence, the civil suit.

4. Based on the rival pleadings, following issues were framed:

“1. Whether plaintiff is entitled to permanent injunction as prayed for? OPP

2. Whether suit of the plaintiff is not maintainable? OPD

3. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD

4. Whether suit of plaintiff is bad for mis-joinder of parties? OPD

5. Relief.”

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, issues No.1 to 3 were decided against the plaintiff and in favour of the defendant. No evidence or arguments were led on Issue no.4.

7. Both the Courts non-suited the plaintiff, resulting in Regular Second Appeal before this Court.

8. Relevant part of Trial Court judgment, for ready reference, is as below:

“No doubt defendant have admitted possession of the plaintiff over the property in dispute but the possession of the plaintiff is proved as of trespasser. Further defendant No.6 is prima facie proved as owner of the property in dispute. It is settled proposition of law that no injunction can be granted in favour of trespasser against the true owner. The plaintiff has alleged that she purchased the property in dispute from defendant no.1 for a sale consideration of Rs.3 lacs and defendant no.1 handed over possession to the plaintiff. Admittedly, defendant no.1 has no power of attorney or authority given by defendant no.6. Even otherwise no document has been produced by the plaintiff regarding the payment of Rs.3 lacs to defendant no.1. Defendant no.1 has denied the receipt of any amount from the plaintiff and defendant no.1 was even otherwise not having any authority to sell the house in dispute. It is not proved prima facie on the file that defendant no.1 was having any authority to sell the house in dispute and it is also not proved on the file that defendant no.1 received any amount from the plaintiff. So the possession of the plaintiff cannot be

admitted as permissive or legal. Further the plaintiff also tried to mislead the court alleging that she has installed electric connection in the house in dispute and also got issued a ration card and voter card on the address of house in dispute. Plaintiff has produced and proved ration card and voter card on the file and in both above said documents number of house is mentioned as 99 ward no.3, Changla Gate, Dasuya, in fact the number of house in dispute is 43, Sarafan Mohalla, Dasuya which is prima facie clear from the Will executed by Lakshmi Devi in favour of defendant no.6. Copy of assessment register being maintained by M.C. Dasuya has also been produced on the file which shows that house number of house of Lakshmi Devi is 43.

Further the above fact that the plaintiff has no record of ownership is admitted during cross-examination by the plaintiff and other evidence led by the plaintiff. Further, it is also admitted during cross-examination that Permila Devi was not owner of the suit property and no receipt taken by the plaintiff at the time of alleged payment of Rs.3 lac through Permila Devi. On the contrary the defendant has fully proved on record that Lakshmi Devi was recorded as owner in the M.C. record of the house in dispute and after that defendant no.6 became owner of the suit property. So the plaintiff has failed to prove that on what capacity Permila Devi defendant No.1 received alleged amount of Rs.3 lacs and why the plaintiff has not taken any receipt with regard to the payment given by them to defendant No.1 as counsel for the plaintiff alleged that sons of plaintiff are working as clerk under the advocate at Dasuya and was having legal knowledge and not illiterate person. Further the plaintiff has failed to prove his legal possession over the suit property.”

9. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties.

10. Learned counsel for the appellant relies on para 18 of the Apex Court’s judgment rendered in **Civil Appeal No. 9472 of 2010 decided on 08.02.2021**, which is reproduced hereinbelow for ready reference:

“18. The submission which has been made by the counsel for the appellants is that in the suit, plaintiff has claimed his title and possession, the High Court committed error in not entering into the question of title of plaintiff and

without determining the title of the plaintiff the suit ought not to have been decreed. Learned counsel for the appellants has placed reliance on the judgment of this Court in Nagar Palika, Jind vs. Jagat Singh, advocate, (1995) 3 SCC 426. In the above case suit was filed by the respondent for injunction which was resisted by Municipal Committee on the ground that the respondent was neither the owner of the land in question nor was he in possession. The trial court dismissed the suit. The First Appellate Court had decreed the suit and second appeal was dismissed by the High Court. Nagar Palika filed appeal before this Court. The argument was raised before this court by Nagar Palika that the Court of law proceeded on the assumption that the acquisition of title through the sale deed which has not been produced before the High Court was admitted fact in the case and had never been questioned by the Municipal Committee. This Court in paragraph 6 disapproving the judgment of the First Appellate Court held following:
XXX XXX XXX”

11. Reliance placed by learned counsel for the appellant on the Apex Court’s judgment *ibid*, is totally misplaced inasmuch in the said judgment it has been clearly stated that in **Nagar Palika vs. Jagat Singh (1995) 3 SCC 426** relied upon by appellants, the Courts below had wrongly decreed the suit *prima facie* without going into the issue of title.

12. Not being so, in the present case as is borne out from the judgment passed by the trial Court as well as the Appellate Court, both applied their mind qua title of the suit and thereafter had come to the conclusion that the appellant/plaintiff is not entitled to any injunction.

13. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

14. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

15. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
16. Pending application/s, if any, shall also stand disposed of.
17. No order as to costs.

(ARUN MONGA)
JUDGE

March 3, 2022
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No