

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

**R.S.A. No.1394 of 2020 (O&M)
Date of Decision: 14.09.2023**

Parvati Devi

.....Appellant

Versus

Karam Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present:- Mr. Abhinav Aggarwal, Advocate,
for the appellant.

GURBIR SINGH, J.

C.M.No.4026-C of 2020

This application has been filed under Section 5 of the Limitation Act, 1963, for condoning the delay of 26 days in filing the present appeal.

For the reasons stated in the application, the same is allowed.

Delay of 26 days in filing the appeal is condoned.

R.S.A. No.1394 of 2020

1. The plaintiff-appellant (hereinafter referred to as 'the plaintiff') has filed this appeal against the concurrent findings of the Courts below. Plaintiff filed the suit against the defendants-respondents (hereinafter called the 'defendants') for grant of permanent injunction

restraining the defendants from dispossessing and interfering in peaceful possession of the plaintiff over the suit property in any manner. As per version of the plaintiff, she has been residing in the suit property for the last 30 years. The electricity connection has been installed in the name of son of the plaintiff and the defendants or any other person have no right, title or concern over the suit property.

2. The defendants contested the suit filed by the plaintiff on the ground that they are owners in possession of the land in dispute being proprietors and co-sharers of the village. The father of the defendants was the owner in possession of the land in dispute and was a co-sharer. He died about 10-15 years ago and thereafter the defendants inherited the suit property as owner in possession. Earlier, sons of the plaintiff along with plaintiff have tried to interfere in the peaceful possession of the defendants. The defendants filed a suit for permanent injunction against the plaintiff and her sons, which is still pending.

3. On the basis of evidence led on the file, learned trial Court came to the conclusion that defendants have proved their possession by way of oral as well as documentary evidence i.e. jamabandi Exhibits D-1 to D-3 for the years 1984-85, 1988-89, 1994-95 and demarcation report dated 18.01.2013 as Mark 'A'. The plaintiff herself admitted in the cross-examination that she had no knowledge how the possession of the suit property came to her and she could not produce any ownership document on the record. She has stated that no girdawari exists in her favour and she had no evidence qua her possession. She has further admitted that

defendant Tara Chand had already filed a suit for permanent injunction dated 16.10.2012 against her sons, namely, Sultan, Surajmal and Ajay. The plaintiff had filed the suit after the suit filed by defendant Tara Chand. The other witnesses who have been examined by plaintiff are Mani Ram as PW-2 and Jago Devi as PW-3, who have stated that the possession of the plaintiff is hostile and sundry. The learned trial Court has opined that the plaintiff has failed to prove even site plan of the suit property and there is no document of ownership in her favour. The suit was dismissed by the learned trial Court and the appeal filed against said judgment and decree was also dismissed by the learned Appellate Court.

4. Counsel for the appellant has argued that PW-2 Mani Ram and PW-3 Jago Devi have duly proved possession of the plaintiff over the suit property. The electricity connection is also in the name of son of the plaintiff. The suit property is within the *lal lakir/Abadi Deh*. Demarcation report dated 18.01.2013 Ex.D-5 is totally false and does not pertain to suit property. Plaintiff is in established possession of suit property. Plaintiff can be dispossessed from the suit property only in accordance with law.

5. I have heard the submissions of learned counsel for the appellant. The plaintiff is required to stand on her own legs.

6. As per Section 101 of the Indian Evidence Act, 1872, the burden of proof lies on the person who desires to give judgment as to any legal right or liability. It is an admitted case of the parties that defendant-Tara Chand has filed the suit for permanent injunction against sons of the plaintiff prior to filing of her suit. Instead of defending the said case, the

plaintiff filed the suit without disclosing that earlier suit was filed by defendant-Tara Chand. The plaintiff is required to come to Court with clean hands. The plaintiff has stated that the electricity connection was not in her name but it was in the name of her son. On the other hand, in the copies of jamabandis Exhibits D-1 to D-3, the defendants being legal heirs of Tara Chand, have been shown as owners in possession. Except the oral testimony of witnesses, plaintiff has failed to prove any document to prove her possession on the suit property. The plaintiff has failed to prove her possession. The plaintiff has not come to the Court with clean hands. Thus, plaintiff is not entitled for injunction against the defendants. Both the Courts below have rightly held that plaintiff has failed to prove her possession on the suit property. It is not a case where evidence has not been properly appreciated and no question of law is involved, much less, substantial question of law.

7. Therefore, the appeal is without any merit and the same is accordingly dismissed.

8. Pending applications are consequently dismissed.

September 14, 2023

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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No

