

RSA-1993 of 2019

2023:PHHC:124101

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

RSA-1993 of 2019

Date of decision: 19.09.2023

Santosh Rani

.....Appellant

Versus

Mam Chand and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Tarun Dhingra, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 01.10.2015 passed by the Court of learned Civil Judge (Junior Division), Kurukshetra, whereby suit of the appellant-plaintiff for permanent injunction was dismissed as well as against the judgment and decree dated 05.09.2018 passed by the Court of learned Additional District Judge, Kurukshetra, vide which the appeal filed by the appellant-plaintiff against the judgment and decree of the trial Court also met the same fate.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Plaintiff filed a suit for permanent injunction against the defendants with the assertions that plaintiff is owner in possession of land measuring 1 Kanal 6 Marlas, which is situated within the Lal Lakir of village Buhavi, Tehsil Thanesar,

District Kurukshetra and bounded as detailed in para No.1 of the plaint. It was further averred that the plaintiff is in possession of the suit property for the last 50 years. It was further averred that earlier the defendants tried to take possession of 14 Marlas of land owned and possessed by the plaintiff which is part of the total land of plaintiff 2 Kanals and regarding the said portion of the land, a suit for permanent injunction is already pending. It was further submitted that the defendants have no right, title or interest in the suit land, but they are bent upon taking forcible possession of the suit land mentioned in para No.1 of the plaint and for that purpose the defendants actually came at the spot on 20.1.2013, but the defendants could not succeed in their illegal act due to the timely intervention of the plaintiff and some other respectable of the village.

3. Upon notice, defendants appeared and filed written statement taking preliminary objections regarding, locus standi, maintainability, cause of action, estoppel, mis-joinder of necessary parties, concealment of true and material facts etc. On merits, it was submitted that in fact, the husband of the plaintiff executed a Relinquishment deed No.539 dated 17.7.2007 in respect of the land measuring 6 Marlas out of the suit land, in favour of one Jagir Singh, brother of husband of plaintiff and said Jagir Singh further executed a relinquishment deed in favour of his wife Kairon Devi and said Karon Devi has executed a sale deed in favour of defendant No.3 vide sale deed dated 16.8.2011. Thus, now the answering defendant No.3 is owner in possession of the land. The husband of the plaintiff has also

executed agreement of full payment of the house in favour of Jarnail Singh son of Surat Singh dated 27.4.1998. The brother of the husband of the plaintiff has also executed an agreement of full payment in respect of the house, in favour of Ramesh Chand, Raghbir Singh, sons of Kali Ram and Ankit son of Suresh on dated 15.10.2005. In this manner, the plaintiff or her husband left with no property in the said village and now they are residing in Sector 7, House No. 717, Urban Estate, Kurukshetra for the last about 5/6 years. After the purchase of the said property, the answering defendants have raised the residential house, and also installed a “*Gobar Gas*” plant and planted the trees over the suit property and now the defendants are owners in possession of the suit property and plaintiff has no right, title or interest in the suit property.

4. From pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is owner in possession of suit property as alleged? OPP.
2. Whether if above issue proved then plaintiff is entitled to decree of permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD
4. Whether the present suit is not maintainable in the present form? OPD
5. Whether plaintiff is stopped by his own act and conduct from filing the present suit? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of parties? OPD
7. Whether the present suit is bad for want of advoletm court fee? OPD

8. Whether plaintiff has not come in the Court with clean hands and concealed true and material facts from this Court? OPD
9. Relief.
5. Parties led oral as well as documentary evidence in support of their respective contentions.
6. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of the plaintiff vide judgment and decree dated 01.10.2015.
7. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 05.09.2018.
8. Learned counsel for the appellant contended that judgments and decrees of both the Courts below are based on surmises and conjectures. He further contended that both the Courts below failed to appreciate and consider the facts and circumstances and material evidence available on record in a judicious way and has given undue weightage to the evidence produced by the respondents. He further contended that findings recorded by both the Courts below being *non est* in the eyes of law are liable to be set aside.
9. I have heard learned counsel for the appellant and perused the record.
10. Appellant-plaintiff filed a suit for permanent injunction claiming herself to be owner in possession of the suit property. However, appellant has failed to prove her possession over the suit property whereas in a suit for permanent injunction, possession over the

suit property is required to be proved. Appellant-plaintiff while appearing as PW-1 during her cross-examination has admitted that they have been residing in Sector 7, Kurukshetra for the last 6-7 years and prior to that they had resided at Ladwa for 10-12 years. She further stated that they had filled the soil in the plot and a '*Gobar gas*' plant was got installed therein. However, there is no mention in the plaint of her affidavit Ex.PW1/A with regard to installation of '*gobar gas*' plant in the suit property. Respondent-defendants in their written statement averred that they had raised residential house and installed a '*gobar gas*' plant and planted trees over the suit property. Respondent-defendant No.1 while appearing as DW2 in his affidavit Ex.DW2/A and Niranjana Singh DW3 in his affidavit Ex.DW3/A have corroborated the version of the defendants. The said version of the defendants deemed to be admitted by the plaintiff as no cross-examination of the defendants was conducted by the plaintiff. Moreover, application filed by the appellant-plaintiff for leading additional evidence has also been dismissed by the lower appellate Court as the appellant failed to prove that proposed additional evidence could not be produced before the trial Court despite due diligence.

11. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

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12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. In view of the above, present appeal is dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

19.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No