

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

RSA-3679-2013(O&M)

Reserved on :- 11.4.2023

Date of decision:-17.4.2023

Smt.Bimla Devi

...Appellant

Versus

Sh.Diwan Chand and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Kanwardeep Singh, Advocate
for the appellant.

Mr.Parminder Singh, Advocate
for the respondent No.2.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Smt.Ayodhaya Devi – widow, Jeewan Parkash – son, Smt.Bimla Devi and Smt.Saroj - daughters of Sh.Prem Raj, all residents of House No.3232, Mochi Mohalla, Sadar Bazar, Karnal had brought a suit for grant of mandatory as well as permanent injunction against defendants Diwan Chand and his wife Smt.Om Pati @ Smt.Baby, both residents of House No.VIII/3231, Mochi Mohalla(Ambedkar Nagar), Sadar Bazar, Karnal, craving for issuance of directions to the defendants to hand over the vacant possession of the house having area 28.44 square yards consisting

of one room and open courtyard, fully described in the head note of the plaint situated at Mochi Mohalla, Sadar Bazar, Karnal and for restraining the defendants from demolishing or reconstructing the suit property.

2. As per the version of the plaintiffs, the suit property was earlier owned by one Gopal son of Bishan Singh, a cousin brother of defendant No.1 Diwan Chand; Gopal had sold the suit property to Prem Raj son of Kashi Ram, predecessor-in-interest of the plaintiffs vide registered sale deed dated 6.11.1992 for a sum of Rs.20,000/- delivering actual possession to him; after death of Prem Raj on 2.7.1999 at Kalka, the house in question is in occupation of his daughter Bimla Devi, though the house had been inherited by all the plaintiffs; about three years before filing of the suit plaintiff Bimla Devi had handed over possession of the house in question to the defendants as licensees for a limited period of a few months since the defendants wanted to construct their house, which is situated towards the northern side of the suit property; defendants had undertaken to vacate the house and deliver possession thereof to the owners as and when their own house was ready for occupation.

As the version of the plaintiffs goes, the defendants had constructed their house, which is situated towards northern side of house in question and plaintiff No.3 occupied house of Smt.Kanta Devi, who was his real sister; such house is situated towards the eastern side of the suit property; plaintiff No.3 delivered possession to the defendants as licensees without any payment with consent of all the LRs of Prem Raj deceased; the plaintiffs had requested the defendants several times to vacate the house and hand over the possession to them but to no effect; on

the other hand, the defendants started demolishing the suit property; the plaintiffs got served a legal notice dated 16.7.2004 upon the defendants asking them to hand over the vacant possession of the suit property to them but to no effect. Therefore, the plaintiffs brought the suit in question.

3. On notice, the defendants appeared and filed a written statement contesting the suit raising preliminary objections that the plaintiffs had no locus standi to file the suit; the suit was not maintainable; no cause of action had arisen to the plaintiffs to bring the suit; the plaintiffs were estopped from filing the present suit by their own act and conduct etc. The defendants denied that plaintiffs are owners of the suit property or prior to them Gopal was having the ownership of such property or that he sold the same to Prem Raj.

According to the defendants, the boundaries of the suit property were not given properly; as a matter of fact the suit property was owned by defendant No.1 Diwan Chand and any sale deed executed by Gopal is ineffective qua rights of the defendants. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

4. No replication was filed. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled for mandatory injunction directing the defendants to hand over the vacant possession of the house in question to the plaintiffs and for permanent injunction restraining the defendants from demolishing or reconstruct the house in question? OPP.
2. Whether the plaintiffs have no locus standi and cause of action to

file the present suit? OPD.

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

4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

5. Relief.

5. The parties led evidence in support of their respective claims.

6. During the course of their evidence, the plaintiff examined Smt.Bimla, one of the plaintiffs as PW1 besides tendering documents Ex.P1 to Ex.P10.

In rebuttal the defendants examined Diwan Chand as DW1, Bhushan Kumar as DW2, Dharamender Chopra as DW3, Surinder Kumar, Consumer Clerk as DW4, Bijender Kumar, Food Inspector as DW5 and Harvinder Singh, Draughtsman as DW6. The defendants also tendered in evidence documents Ex.D1 to Ex.D23.

7. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Karnal by giving issue-wise findings vide judgment and decree dated 1.6.2010 dismissed the suit of the plaintiffs.

8. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment and decree dated 13.12.2012 dismissed the same.

9. Still feeling dissatisfied, the plaintiff No.3 Bimla Devi has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit be decreed.

10. Notice of the appeal was issued to the respondents/defendants. However, only respondent No.2 put in appearance through counsel.

11. I have heard learned counsel for the parties besides going through the record and I find that the appeal is absolutely without merit.

12. The trial Court after thorough and detailed consideration has observed that plaintiffs are basing their claim on the sale deed said to have been executed by Gopal in favour of their predecessor-in-interest Prem Raj, however, it transpires that Bishan Singh father of Gopal had sold plot to Kunta Devi and thereafter Gopal had sold the suit property; since it is not clear as to how much property Bishan Singh was having and what was title of Bishan Singh and further what were dimensions of the property of Bishan Singh, as Bishan Singh had already sold the suit property to Kunta Devi, which is on the eastern side of the suit property and thereafter son of Bishan Singh had sold property to Prem Raj, therefore title of Gopal is not proved and as per dimensions shown in the site plan produced by the plaintiffs, Ratti Ram, a brother of Bishan Singh is shown in possession of plot on the western side. The trial Court has further noticed that plaintiff Bimla Devi appearing as PW1 had stated that construction over the suit property was made by defendants about three years back and no complaint was made by her to the police at that time. The trial Court found that suit of the plaintiffs for grant of mandatory injunction having been filed after three years of raising of construction was barred by limitation. It has also been observed that defendants have relied upon various documents like electricity bills, ration card etc. to show their possession over the suit

property.

13. Learned Additional District Judge, Karnal has observed that since it is not proved on record that Gopal was owner in possession of the suit property, he could not have possibly sold the same to Prem Raj. Referring to the arguments advanced by learned counsel for the appellants/plaintiffs, learned Additional District Judge, Karnal in para No.15 of his judgment has observed that the plaintiffs had nowhere pleaded in their plaint that Gidhu Ram was owner of the suit property and after his death, it was inherited by Ratti Ram and Bishan Singh and whose share which remained unsold was inherited by Gopal; furthermore the plaintiffs have failed to establish that the suit property had been given to defendants on licence by plaintiff No.3 since no date, month or year has been mentioned in the pleadings and plaintiff Bimla Devi appearing as PW1 has not stated anything in that regard. No document showing the previous possession of plaintiff No.3 over the suit property had been proved on record.

14. Another aspect, which was examined by learned Additional District Judge, Karnal was with regard to suit for permanent injunction filed by Ratti Ram against Kunta Devi in which Bishan Singh was impleaded as one of the defendants, however later on his name was got deleted. In that suit, Ratti Ram had pleaded that house had been jointly possessed by him as well as Bishan Singh and Bishan Singh had sold part of his share to Kunta Devi. The suit was later on withdrawn by the plaintiff. Learned Additional District Judge, Karnal rightly rejected such assertions in absence of the pleadings in that regard as well as the non-

availability of the evidence in that respect. Learned Additional District Judge, Karnal has further observed that defendants have succeeded in proving that after death of Ratti Ram, his daughter Baby had transferred the property in favour of defendant No.1 vide decree Ex.D20 and since then defendant No.1 is in possession as owner and there was nothing to show that plaintiffs as owners of the suit property.

15. It may be mentioned here that during the pendency of the appeal, the plaintiffs appellants had filed an application for additional evidence to lead additional evidence so as to produce certified copy of the plaint in Civil Suit No.680 of 1986 decided on 16.7.1987 as well as the copy of order dated 16.7.1987 and site plan filed by father of the defendants. However, that application was not allowed.

16. Thus with both the Courts below having returned concurrent findings that plaintiffs have failed to establish their title to the suit property and to establish that they had allowed the defendants to come in possession of the house in question as licensee or that licence has been revoked, on the other hand, it being established on the record that defendants are in possession as owners having raised construction of the house themselves, the suit of the plaintiffs was rightly dismissed by the trial Court and such judgment and decree was correctly affirmed by the First Appellate Court.

17. The findings given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the

impugned judgments and decrees. Those judgments and decrees are upheld.

18. No substantial question of law or fact arises in this appeal.

19. The appeal stands dismissed with costs accordingly.

The interim order dated 1.12.2014 passed by this Court directing that respondents shall not further alienate and change the nature of the suit property, thus comes to an end.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

17.4.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**