

CM-4546-C-2018, CM-4545-C-2018
CM-4547-C-2018 in/and RSA-1692-2018
Date of Decision : 01.03.2023

Kaushal Rani

...Appellant

versus

Ram Gopal and another

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Ashok Kumar Khubbar, Advocate for the appellant.

B.S. Walia, J. (Oral)

CM-4546-C-2018

For the reasons as are mentioned in the application, the same is allowed. Delay of 33 days in late filing of the appeal is condoned subject to all just exceptions.

CM-4545-C-2018

For the reasons as are mentioned in the application, the same is allowed. Delay of 280 days in re-filing of the appeal is condoned subject to all just exceptions.

RSA-1692-2018 (O&M)

1. Challenge in the instant regular second appeal is to the judgment and decree dated 21.07.2016, passed by the learned Addl. District Judge, Yamuna Nagar at Jagadhari, in Civil Appeal No.23 of 2012/16, upholding the judgment and decree dated 30.03.2012, passed by the learned Addl. Civil Judge (Senior Division), Yamuna Nagar at Jagadhari, in Civil Suit No.288 of 2008.

2. A perusal of judgment and decree dated 30.03.2012, passed

by the learned Addl. Civil Judge (Senior Division), Yamuna Nagar at Jagadhari reveals that a civil suit was filed by the appellant-plaintiff for permanent injunction for restraining the respondents/defendants from interfering in the actual and physical possession of the appellant-plaintiff over residential house/haveli marked with letters 'ABCD' in red colour in the site plan attached and bounded as under:-

North : House of Chetan Parkash

South : House of Satish Kumar

East : Street

West : Property of Kishanveer and Randhir etc.

situated in the revenue estate of village Jathlana, Sub Tehsil Radaur, Tehsil Jagadhari, District Yamuna Nagar, by way of demolishing/dismantling or damaging the house/haveli by making any addition or alteration, changing the existing nature of the property in any manner, whatsoever, on the basis of false and frivolous documents.

3. On the basis of pleadings, the learned trial Court vide order dated 17.11.2008, framed the following issues:-

1. Whether the plaintiff is in actual physical and peaceful possession over the residential house/haveli as detailed in the plaint? OPP

2. Whether the defendants have threatened to demolish/dismantling or damaged the house/haveli and started claiming interest over the suit property? OPP

3. Whether the defendants have no concern whatsoever over the suit property, as alleged in para No.3 of the plaint? OPP

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the plaintiff has no locus standi to file the present

suit? OPD

6. Whether the plaintiff has concealed the true and material facts from the Court? OPD

7. Whether the plaintiff has not come to the Court with clean hands? OPD

8. Relief.

4. Thereafter, on the basis of pleading, evidence and submissions made by learned counsel for the parties, the learned trial Court decided issue Nos.1 to 3 in favour of the respondents-defendants and against the appellant-plaintiff, qua issue Nos.4 to 7, the finding was that in view of the appellant-plaintiff having failed to prove her ownership or possession of the suit property, neither the suit filed by her was maintainable nor she had any locus standi to file the suit in question, besides she had not approached the Court with clean hands and as a consequence thereof, dismissed the suit with costs.

5. Sole argument of learned counsel for the appellant-plaintiff is that the appellant-plaintiff was in possession of half share of the property, therefore, the injunction prayed for could not have been denied.

6. A perusal of the judgment passed by the learned Addl. Civil Judge (Senior Division), Yamuna Nagar at Jagadhari reveals that the father of the appellant-plaintiff, Chand Kiran was the absolute owner of the property fully described in the head note of the plaint and he had two daughters i.e. the appellant-plaintiff and Kamlesh Rani. Chand Kiran, father of the appellant-plaintiff is alleged to have executed a Will in favour of the appellant-plaintiff regarding the house in dispute and of having delivered possession of the same to her during his life time with the consent of the other daughter namely Kamlesh Rani and since then

the appellant-plaintiff claimed to be in actual physical possession of the house without any interference from any quarter. The appellant-plaintiff took up the stand that the respondents/defendants had no concern whatsoever with the suit property and had started claiming a right in the same and started demolishing/dismantling the house in question on the basis of some false and frivolous documents.

7. The respondents/defendants filed written statement denying the aforementioned stand of the appellant-plaintiff, instead took up the plea that the appellant-plaintiff by playing fraud upon her father had managed to obtain judgment and decree dated 29.03.1993, in Civil Suit No.153 of 1993. Kamlesh Rani, sister of the appellant/plaintiff challenged the said judgment and decree by filing another civil suit. The said civil suit was decreed in favour of Kamlesh Rani vide judgment and decree dated 21.08.2001, in Civil Suit No.208 of 1994. In the said civil suit, the appellant-plaintiff claimed ownership over the suit property on the basis of alleged Will which was declared as suspicious document and was not relied upon by the Court. Appeal preferred by the appellant-plaintiff against said judgment and decree was also dismissed vide judgment and decree dated 22.02.2022. On the basis of the same, the respondents/defendants pleaded that the appellant/plaintiff was entitled to half share in the properties i.e. agricultural land as well as the suit property and that they had purchased the share of Kamlesh Rani vide sale deed dated 11.01.2008 and said vendor had put them in actual physical possession of the suit property to the extent of her share sold to them. It was also pleaded that the appellant/plaintiff had no right whatsoever in the suit property as she had already sold her half share vide sale deed

replication was filed by the appellant/plaintiff.

8. The learned trial Court on the basis of the issues framed, evidence led and arguments advanced held that the appellant-plaintiff had failed to prove the Will on the basis of which she was placing reliance, as the appellant-plaintiff had neither examined any attesting witness of the Will and had merely placed on record copy of the Will by way of statement of counsel and that mere exhibition of copy of Will did not amount to its proof besides the original Will had never been produced on the case file. The learned trial Court further held that on the basis of the very same Will a suit was filed by the appellant-plaintiff which was decreed on 29.03.1993 by the Court of Shri U.B. Khanduja, the then learned Sub Judge, Jagadhari but the said judgment and decree dated 29.03.1993, was challenged by Kamlesh Rani, in Civil Suit No.208 of 1994 and said suit was decreed by the Court of Ms. Anita Dahiya, the then learned Addl. Civil Judge (Senior Division), Jagadhari, vide judgment and decree dated 21.08.2001 Ex.DW1/D and Ex.DW1/E and the appellant-plaintiff had also challenged the judgment and decree dated 21.08.2001, by way of an appeal but the same was dismissed vide judgment and decree Ex.DW1/E and Ex.DW/G, passed by the Court of Mr. R.C. Gupta, the then learned District Judge, Jagadhari and that in the said judgments also, Will Ex.P1 was challenged but it was held that no reliance could be placed on the said Will.

9. That, in the aforementioned background, the learned trial Court held that the claim of the appellant-plaintiff on the basis of the same Will was liable to be rejected. The learned trial Court further held that admittedly the father of the appellant-plaintiff namely Chand Kiran was owner in possession of the suit property and had two daughters

namely the appellant-plaintiff and Kamlesh Rani and as Will Ex.P1 could not be relied upon, the suit property was inherited by the appellant-plaintiff and Kamlesh Rani in equal shares i.e. half share each and while the appellant-plaintiff had sold her share in the suit property vide sale deed Ex.DW1/B dated 17.06.2008, Kamlesh Rani had also sold her share vide registered sale deed Ex.DW1/C dated 11.01.2008 to the respondents-defendants, thus, the respondents-defendants had become owners in possession of half share of the suit property measuring 31x50 feet whereas the share of the appellant-plaintiff was purchased by Bimlesh Rani and Saroj Bala and thus, the appellant-plaintiff was left with no right whatsoever in the suit property and hence was not entitled to file the suit. The learned trial Court further rejected the plea of the appellant-plaintiff that the sale deed Ex.DW1/B, was not with regard to the suit property but was with regard to an open plot, by holding that a haveli had been constructed on the portion sold by the appellant-plaintiff to Bimlesh and Saroj Bala and the sale deed was with respect to half share in the haveli inherited by the appellant-plaintiff from Chand Kiran and this fact has also been mentioned in the sale deed itself. On the basis of the same, the learned trial Court held that the appellant-plaintiff had failed to show that she had any concern with the suit property.

10. The learned trial Court further held that as per sale deed Ex.DW/C, Kamlesh Rani sister of the appellant-plaintiff sold her share in favour of the respondents/defendants and had handed over the possession of the same to the respondents/defendants and as the appellant-plaintiff herself had sold her share in the suit property to Bimlesh Rani and Saroj Bala vide sale deed Ex.DW1/B, she was left with no right whatsoever in the suit property, thus, the respondents/defendants could not be restrained

from using the suit property in the manner, they liked. In the light of the aforementioned background, the suit was dismissed with costs.

11. Appeal filed by the appellant-plaintiff met with the same fate and the learned first Appellate Court observed that a perusal of sale deed Ex.DW1/B reveals that subject matter thereof was share of appellant-plaintiff in that haveli, which was the subject matter of the suit property and that the appellant-plaintiff had sold her half share in the haveli inherited by her from her father by dint of sale deed sale deed Ex.DW1/B to Bimlesh and Saroj Bala, therefore, the appellant-plaintiff was left with no right, title or interest in the suit property in any manner and as per sale deed Ex.DW/C, Kamlesh Rani had sold her share in favour of the respondents-defendants and put them in possession besides the appellant-plaintiff had failed to show by adducing clinching and convincing evidence that she was in possession of the suit property in any capacity, therefore, had failed to establish her possession over the suit property to any extent and thus was held to be not entitled to any injunction both in law and on facts.

12. I have considered the sole submission of learned counsel.

13. Unfortunately, this case reveals a very sorry state of affairs, where despite there not being an iota of evidence, the appellant-plaintiff has invoked the jurisdiction of numerous Courts firstly by filing the civil suit thereafter by filing first appeal and lastly by filing the instant appeal, without being able to establish her claim in any manner whatsoever over the suit property. In addition thereto, the Will on the basis of which the appellant-plaintiff had obtained a decree in her favour in CS No.153 of 1993, was challenged by her sister by way of CS No.208 of 1994 and was

decided in favour of her sister, Kamlesh Rani and the judgment and

decree passed in favour of the appellant-plaintiff was set aside. Appeal filed by the appellant-plaintiff against the said decision was also dismissed. Resultantly, the property owned by the father of the appellant-plaintiff and her sister, Kamlesh Rani was inherited by both sisters in equal shares. The appellant-plaintiff sold her share of the suit property to Bimlesh Rani and Saroj Bala while her sister, Kamlesh Rani sold her half share in the suit property to the respondents/defendants herein and had put them in possession. Both the Courts below have categorically recorded that in the circumstances, the appellant-plaintiff has miserably failed to show any right, title or interest in the suit property or of being in possession thereof. Despite query, learned counsel for the appellant-plaintiff has failed to refer to any evidence to show any right, title or interest of the appellant/plaintiff in the suit property, or of her being in possession thereof. The facts of the case go to show the false stand set up by the appellant-plaintiff before the Courts below as well as before this Court. In the circumstances, I do not find any ground whatsoever to interfere with the well reasoned judgments passed by the learned Courts below. No substantial question of law much less question of law arises for consideration. Accordingly, in the facts and circumstances, the instant appeal is dismissed with costs of Rs.25,000/- to be deposited with the High Court Legal Services Committee. In case the appellant-plaintiff fails to deposit the costs within six weeks of uploading of the order, Registry is directed to put up the matter for appropriate orders.

(B.S. Walia)
Judge

01.03.2023

rajesh