

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

RSA-2001-2018(O&M)

Reserved on:-18.4.2023

Date of Pronouncement:-20.4.2023

Smt.Sunita

...Appellant

Versus

Smt.Shakuntla Devi

...Respondent

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

Present: Mr.Johan Kumar, Advocate
for the appellant.

Mr.Ashish Tewatia, Advocate for
Mr.M.S. Tewatia, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Smt.Shakuntla Devi had brought a suit for possession against her real sister Smt.Sunita – defendant contending that she is co-owner in plot bearing Khasra No.141/8(7-12) to the extent of 100 square yards, situated at Shamshabad, District Palwal on the basis of sale deed bearing No.5082 dated 7.1.1997 for a sum of Rs.40,000/- from earlier owners Shri Chand etc; mutation has since been entered and sanctioned in her favour; she came in actual physical possession of that plot, where she had constructed a residential house; since husband of the plaintiff was in service at Delhi,

she shifted to that place; her sister – defendant Sunita was not having any residential house at Palwal and the plaintiff after constructing house in 100 square yards area towards northern side allowed the defendant to live in said house as licensee in the year 2004; the plaintiff had sold about 100 square yards area to one Raj Pal, resident of village Sihol and delivered actual physical possession of that area towards the southern side to him; the plaintiff called upon the defendant to vacate the house but she did not do so, rather she filed a suit for permanent injunction against the plaintiff, which was dismissed vide judgment and decree dated 12.12.2015 by Civil Judge (Jr.Divn.), Palwal. Thereafter, the plaintiff requested the defendant to vacate the house but to no effect, as such the plaintiff filed the suit in question.

2. On notice, the defendant appeared and filed a written statement contesting the suit raising various legal objections claiming that she had purchased 100 square yards out of plot measuring 200 square yards from the plaintiff for total consideration of Rs.2,00,000/- in the year 2004 and plaintiff had handed over possession of that area to her; on account of close relationship between the parties, the sale deed was not executed immediately, rather the matter was kept open; thereafter the defendant asked the plaintiff to execute the sale deed in her favour but the plaintiff refused to do so. The defendant denied that she is in possession of the property as a licensee or she is liable to vacate the said property on revocation of any such licence. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

3. On the pleadings of the parties, following issues were

framed:

1. Whether the plaintiff is entitled to decree for possession as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has not come with clean hands and suppressed the true and material facts from the court? OPD
4. Whether the court has no jurisdiction to hear and adjudicate the suit? OPD
5. Whether the suit of the plaintiff is false, frivolous and vexatious in nature? OPD
6. Relief

4. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Palwal by giving issue-wise findings vide judgment and decree dated 30.7.2016 had decreed the suit filed by the plaintiff for possession with regard to the suit property directing the defendant to vacate the same and hand over peaceful possession to the plaintiff within 2 months from the date of decision, otherwise the plaintiff could get the possession through agency of the Court.

6. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Palwal, who vide judgment and decree dated 5.3.2018 dismissed the same, in the process affirming the judgment and decree passed by the trial Court.

7. Still feeling dissatisfied, the defendant 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 dismissed.

8. Notice of the appeal was issued to the respondent/plaintiff,, who put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. In this case both the Courts below keeping in view the pleadings of the parties, the evidence brought on record by them, in light of the settled legal position, have returned the findings that plaintiff is owner of the suit property and the possession of the defendant is that of licensee and she, after revocation of licence is liable to vacate the possession. The version set up by the defendant that she is in possession as owner on the basis of oral sale by plaintiff in her favour was considered but rejected by the Courts below. Both the Courts below are unanimous in arriving at such conclusion, which are based upon proper appreciation of facts and evidence as well as correct interpretation of law. 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.

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

12. The appeal stands dismissed with costs accordingly.

The order dated 19.4.2018 passed by this Court directing the parties to main status quo regarding possession thus comes to an end.

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

20.4.2023
Brij

(H.S.MADAAN)
JUDGE

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

Whether reportable : **Yes/No**