

RSA-492-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-492-2019 (O&M)
Decided on : 11.09.2023

Savitri Devi

. . . Appellant(s)

Versus

Ashok Kumar

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Jai Vir Yadav, Sr. Advocate with
Mr. Rohit Kumar Rana, Advocate and
Mr. Aman Gautam, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by the plaintiff – Savitri Devi (appellant herein), against the concurrent findings of dismissal of suit filed by her.

2. Plaintiff – Savitri Devi filed a suit for seeking a decree of permanent injunction against the sole defendant – Ashok Kumar (respondent herein), by stating that she being owner in possession of the land comprised in Khewat No.150, Khatoni No.186, Rect. No.32, Killa No.5 (7-4), 4 min (1-16), total measuring 9 Kanals, situated within the revenue estate of Village Rasiawas, Tehsil Bawal, District Rewari (for brevity, the ‘**suit land**’), is entitled to protect her possession, which was delivered to her vide sale-deed Vasika No.4508, dated 12.12.2011, by the defendant – Ashok Kumar. Plaintiff claims her continuous possession since the time of execution of the sale-deed (Ex.PW2/B) i.e. 12.12.2011.

3. It is further pleaded that mutation No.848, has been got

cancelled by Assistant Collector, 2nd Grade, Bawal, due to non-payment of the loan amount by the defendant – Ashok Kumar, which was taken from the Union Bank of India Branch, Rewari. As the defendant did not disclose the actual facts, and no entry of any loan was entered in the Jamabandi, plaintiff filed a criminal case against the defendant and Halqa Patwar namely; Gurdial Singh, under Sections 420, 467, 468, 471 of IPC, and proceedings regarding the same were pending.

In the meantime, Union Bank of India (UBI) filed a recovery suit before the Debt Recovery Tribunal, Chandigarh (for brevity, ‘the DRT’) against the defendant – Ashok Kumar, for taking permission to recover the loan from mortgaged suit land.

It is further pleaded by the plaintiff herself that defendant approached to her husband namely; Jeet Ram, for depositing the loan amount of UBI, Rewari, and in lieu of that, defendant promised that he will transfer his total suit land in the name of plaintiff’s husband. Under the said promise, husband of the plaintiff handed-over a demand draft dated 01.08.2013, amounting to Rs.16.10 lakhs, to the defendant. Defendant – Ashok Kumar, deposited the said demand draft before the DRT, Chandigarh, and thereafter, filed his objection against the auction. However, later on, defendant became dishonest and withdrew his objection. Now, the defendant wants to grab the said money i.e. Rs.16.10 lakhs paid by the plaintiff’s husband through demand draft, and is further keen to see the plaintiff out of the possession of the suit land. Thus, suit for permanent injunction was instituted.

4. In the written statement filed by the defendant, the facts emerged that the suit is not maintainable on several grounds like; non-

joinder of auction purchaser – Satbir Singh, jurisdiction of confirmation of sale vide DRT, Chandigarh, having been already exercised. It is also pleaded in the written statement that mutation of sale-deed No.848 (Ex.PW2/B), has already been cancelled by AC, 2nd Grade, Bawal, and in fact, no possession was delivered to the plaintiff at any point of time. Even at the time of sale-deed (Ex.PW2/B), plaintiff was not present, thus, question of delivery of possession does not arise.

5. After completion of pleading of the parties, learned Trial Court vide its order dated 20.05.2014, framed following seven issues:-

- “(1) *Whether the plaintiff is owner in possession of property mentioned in paragraph no.1 of the plaint? OPP*
- (2) *Whether the defendants are interfering in the peaceful possession of the plaintiff in the suit property without any right to do so? OPP*
- (3) *Whether the suit is not maintainable? OPD*
- (4) *Whether the suit is liable to be dismissed for want of filing the duplicate plaint? OPD*
- (5) *Whether the plaintiff is estopped by own act and conduct from filing the suit? OPD*
- (6) *Whether this Court lacks jurisdiction in the matter at issue? OPD*
- (7) *Relief.”*

6. As the relief sought by the plaintiff was only to seek a decree of permanent injunction, it was bounden upon the plaintiff to prove her possession. Both the Courts below have discussed the recital in the sale-deed (Ex.PW2/B), wherein, delivery of possession by the defendant – Ashok Kumar, in favour of plaintiff – Smt. Savitri Devi, has been mentioned.

7. However, both the learned Courts below have also held that apart from the said mentioning of recital in the sale-deed (Ex.PW2/B), there

is no other supporting or corroborative evidence in any manner led by the plaintiff to prove her physical possession over the property in question. Rather, learned Courts below have also noticed the statement deposed by the plaintiff before the Court below, wherein, she admitted that in fact, possession had been handed-over to her after 3-4 days of the execution of the sale-deed (Ex.PW2/B).

Thus, the finding recorded by the learned Courts below is that there is contradictory stand regarding handing over the possession in favour of the plaintiff. Thus, sole recital of mentioning of said fact, carries no value in the absence of any supporting evidence, which was to be led by the plaintiff herself under issue No.1.

8. It is also noticed by this Court that the proceedings before the DRT, Chandigarh, had been started by fixing the auction proceedings for 04.07.2023, i.e. prior to the institution of the present suit on 30.10.2013. In other words, on the day of filing of the suit for injunction, plaintiff was well aware of the proceedings initiated by the DRT, Chandigarh. Still, plaintiff did not choose to implead the Bank as well as the auction purchaser of the suit land namely; Satbir Singh, as party in the suit. Thus, intention of the plaintiff to file the present suit is also doubted by the Court.

There is another aspect that on the one hand, plaintiff has asserted her right over the property being its owner for the purpose of protecting the possession, and on the other hand, never any step has been taken by the plaintiff to challenge the proceedings, which took place before the DRT, Chandigarh, whereby, third party rights were also created, well before the filing of present suit by the plaintiff.

9. Even both the Courts below have also noticed that original sale-

deed (Ex.PW2/B) was never placed on record. Thus, plaintiff made a half hearted attempt to seek a decree of permanent injunction, without proving the sale-deed (Ex.PW2/B) itself in accordance with law, while on the basis of recital mentioned in the said sale-deed (Ex.PW2/B), possession is sought to be protected.

10. Apart from the facts noticed by this Court, observation made by the learned First Appellate Court, in paragraphs No.15, 16, is also reproduced hereunder:-

“15. *The claim of the appellant-plaintiff was that she had become owner in possession of the disputed property on the basis of the sale deed Ex.PW-2/B and that the respondent-defendant from whom she had purchased the disputed property was interfering in his possession over the same. The respondent-defendant did not deny that the sale deed Ex.PW2/B had been executed by him in favour of the appellant-plaintiff but the stand taken by him was that the possession of the disputed property had never been delivered to the appellant-plaintiff and the same was with him. Though it had not been clearly pleaded in the plaint but it has come on record that after execution and registration of the sale deed in her favour, the appellant-plaintiff had come to know that the respondent-defendant had previously taken loan from Union Bank of India by mortgaging the disputed and other property owned by him. It is common case of both the parties that the mutation No.848 which was to be sanctioned in favour of the appellant-plaintiff on the basis of the sale deed Ex.PW-2/B, had been cancelled by the Assistant Collector 2nd Grade on 11.12.2012 by making an endorsement that this property was lying mortgaged with Union Bank of India. It has also come on record that the appellant-plaintiff had initiated criminal proceedings against the respondent-defendant for cheating her and by not disclosing the fact that*

the disputed property was already lying mortgaged and those proceedings are pending. It is also proved on record that proceedings had also taken place before the Debt Recovery Tribunal, Chandigarh. According to the appellant-plaintiff, on being approached by the respondent-defendant to deposit the loan amount of 16.10 lacs with the ₹ Union Bank of India, Rewari to clear the legal dues of the respondent-defendant, her husband had got prepared a demand draft to the tune of the aforesaid amount and had given the same to the respondent-defendant and in lieu thereof the respondent-defendant had executed an agreement on 1.8.2013 for sale of his other property in the name of her husband. No document whatsoever had, however, been produced on record by the appellant-plaintiff to show that any such written agreement was executed between the her husband and the respondent-defendant for transfer of the some property in favour of the husband of the appellant-plaintiff but at the same time it is relevant to mention that the respondent-defendant himself had admitted the fact of executing agreement but according to him a sum of only 6,00,000/- had been received ₹ by him from the husband of appellant-plaintiff. Be as it may be, the question before this court is whether the appellant-plaintiff was in possession of the disputed property. On a perusal of the document Mark-DX, it is clearly revealed that the Debt Recovery Tribunal, Chandigarh had auctioned the disputed property in a public auction held on 4.7.2013 in favour of one Satbir Singh son of Kaliya Ram resident of village Rasiawas, Tehsil Bawal, District Rewari. The present suit had been filed after auction in favour of the above said Satbir but the appellant-plaintiff is not proved to have challenged the auction proceedings conducted on 4.7.2013. It has been revealed from the documents produced on record by the appellant-plaintiff herself that the disputed property was already lying mortgaged at the time when the same had been sold to her by the respondent-defendant vide sale deed

Ex.PW2/B. Meaning thereby that the respondent-plaintiff was legally not competent to sell this property in her favour and the sale so effected was not valid as the lien of the disputed was already with some bank. Rather, the documents produced on record show that two different mortgages had been created by the respondent-defendant in respect of this property. The respondent-defendant might have committed fraud with the appellant-plaintiff but the question which was to be adjudicated by the Civil Court was that as to whether she was proved to be in possession of the disputed property as the appellant-plaintiff did not challenge the title created in favour of auction purchaser Satbir in respect of the suit property by seeking a relief of declaration as to validity of the auction proceedings and sale certificate issued in favour of Satbir. She is not shown to have filed any suit for recovery of the sale consideration amount paid by her to the respondent-defendant at the time of execution and registration of the sale deed Ex.PW-2/B in her favour. Neither there is any material on record to show that her husband had filed any suit for specific performance of the agreement which was allegedly executed in his favour. So far as the question of possession is concerned, no doubt there is specific recital in sale deed Ex.PW-2/A that the possession of this property had been delivered to the purchaser i.e. appellant-plaintiff but she failed to lead any positive and cogent evidence to prove that she was in fact in possession of the disputed property. It is also well settled proposition of law that mere recital in the sale deed is not conclusive to prove possession. Reliance in this regard placed on the authority cited as Jagir Singh's case, supra, wherein it was also held so. Further, contradictory to the recital in the sale deed Ex.PW-2/B, she stated that the possession of the disputed property was taken by her 4-5 days after the registration of the sale deed but in the next breath she stated that crop over the disputed property was grown by the respondent-defendant. Meaning thereby

that it was the respondent-defendant who was in fact in actual physical possession of the disputed property. It is admitted that no rapat rojnamcha was made in the revenue record qua her being in possession nor any notice was given to her in this regard. She also admitted that she had not filed any application/suit for correction of khasra girdawari entries in her favour. She admitted that the disputed property was already lying mortgaged and that now it had been auctioned in favour of Satbir. Her bare oral statement with regard to her being in possession of the disputed property has not been corroborated by any other evidence either oral or documentary and therefore, in my opinion, the same could not be acted and relied upon for the purpose of proving that the disputed property was in her possession.

16. *One more point is important. The respondent-defendant had produced Ex.D-1 copy of khasra girdawari entries showing him to be in possession of the disputed property from the year 2010 to 2015. The appellant-plaintiff failed to bring any material on record to show that he had filed any application/petition for correction of khasra girdawari and recording her name in the column of possession over the disputed property. Therefore, neither her name is reflected in the revenue record in the column of cultivating possession nor she is proved have moved an application for change of entries in the revenue record. As such, there can be no presumption that actual physical possession of the disputed property was delivered to her at any point of time. For the purpose of seeking relief of permanent injunction, the appellant-plaintiff was required to prove that she was in possession of the disputed property. No doubt, the court while dealing with such a suit cannot go into the question of title. Even otherwise, she did not produce the original sale deed on record and only a certified copy of the same was produced. In the absence of the original sale deed and in view of the fact that the possession of the disputed*

*property is not proved to be with her, it cannot be presumed that actual title qua the disputed property had been passed in favour of the appellant-plaintiff. In **Surjit Singh's case**, supra, it was observed by our own Hon'ble High Court that merely because the mutation of the sale deed of agricultural land was not sanctioned in the revenue record, it could not be presumed that the rights of the vendee in the sale deed would evaporate and that the sale deed is a document of transfer of title whereas mutation is only a fiscal entry for the purpose of updating the revenue record and collection of land revenue. While being in respectful agreement with the ratio of law as laid down in the authority cited by learned counsel for the appellant-plaintiff, it is held that the same is not applicable to the peculiar facts and circumstances of the present case. As discussed above, valid title in respect of the disputed property is not shown to have been passed in favour of the appellant-plaintiff due to the reason that this property was already lying mortgaged with some bank prior to sale of the same in favour of the appellant-plaintiff. The appellant-plaintiff failed to produce any cogent and satisfactory evidence on record to prove that she was in possession of the disputed property. She had claimed simplicitor relief of permanent injunction and on the basis of the material placed on record she was rightly not held entitled to the said relief by the learned lower court. The findings given by the learned lower court are well reasoned and in view of the foregoing discussion, it is held that the same do not warrant any interference. Accordingly, the same are affirmed and hence, the appeal has become liable to be dismissed."*

11. In view of above, this Court does not find any substance in the submissions addressed by learned Senior counsel. Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed

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by the Courts below.

Thus, the instant appeal being devoid of merits, stands dismissed. The judgments & decree passed by both the Courts below are affirmed.

Pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 11, 2023

J.Ram

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

Whether Reportable: *Yes/~~No~~*