

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

RSA-740-2021 (O&M)
Date of decision : 17.07.2024

KAMLESH DEVI

....Appellant

Versus

MANGE RAM AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Narender Kaajla, Advocate
 for the appellant.

PANKAJ JAIN, J. (ORAL)

Defendant is in Second Appeal.

2. For convenience, parties herein after are referred to by their original position in the suit i.e. the appellant as defendant and respondent No.1 as the plaintiff.

3. Plaintiff filed suit seeking decree of possession with consequential relief of prohibitory injunction to the effect that he is the owner of plot/house No.243-A under defendant No.2-Society having purchased its membership No.2623 vide Certificate No.1132 of 24th of February, 2013. At the time of purchase of the said plot, defendants No.1 i.e. the appellant was in possession and it was decided that she herself will vacate the plot/house on or before 31st of May, 2013. However, defendant

2024:PHHC:089213



No.1 having failed to vacate the same, the plaintiff was entitled to the decree of possession.

4. The suit was resisted by defendant No.1 who denied the title of the plaintiff and rather pleaded herself to be the owner in possession of the plot/house in question vide allotment Certificate/letter No.153, membership No.346 dated 25th of June, 1995 claiming that the same was issued by defendant No.2-the Society. It was further claimed by defendant No.1 that the civil suit was barred as the property in question was within municipal limits and thus the relationship of defendant No.1 and the plaintiff will be governed by Haryana Urban (Control of Rent and Eviction) Act, 1973 and defendant No.1 cannot be dispossessed except by resorting to the procedure as prescribed under Section 13 of the Haryana Rent Act.

5. On the basis of the pleading of the parties, Trial Court framed the following issues:

- “1. Whether the plaintiff is entitled for decree of possession of plot/house as prayed for in the head note of the plaint alongwith consequential relief of permanent and prohibitory injunction on the grounds as mentioned in the plaint? OPP.
2. Whether present suit is not maintainable in its present form? OPD
3. Whether Civil Court has no jurisdiction to try the present suit? OPD
4. Whether suit of the plaintiff is time barred? OPD
5. Whether plaintiff has no cause of action and locus standi to file the present suit? OPD

2024:PHHC:089213



6. Relief .”

6. Both the parties led their respective evidence. On analysing the same, Trial Court found that the plaintiff successfully proved that he was owner of the property having purchased the same on 24th of February, 2013 from one Baru Ram son of Lal Chand for a valuable consideration of Rs.4.00 lacs. Society i.e. defendant No.2 also admitted the ownership of the plaintiff. The title set up by defendant No.1/appellant was found to be bogus and the documents relied upon by her, were found to be against the records being maintained by the Society. Trial Court decided issue No.1 in favour of the plaintiff. Since, the defendants failed to lead any evidence *qua* issue No.2 to 5, the same were also decided in favour of the plaintiff and against the defendants. Resultantly, the suit was decreed.

7. In the First Appeal preferred by the defendant, the findings recorded by the Trial Court have been affirmed and the appeal stands dismissed.

8. Counsel representing the appellant while assailing the impugned judgment submits that the legal question that will be falling for consideration of this Court would be *‘whether Civil Court had the jurisdiction to try the lis once the possession of defendant No.1 was claimed to be that of tenant?’*

9. I have heard counsel for the appellant and have carefully gone through the records of the case.

2024:PHHC:089213

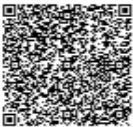


10. In the considered opinion of this Court, the argument raised by the counsel for the appellant sans merit and deserves to be rejected for more than one reason.

11. The stand pleaded by the defendants based upon forged and fabricated documents denying the title of the plaintiff is sufficient to non-suit her and shall act as estoppel against her from pleading tenancy.

12. It is not a case wherein the appellant/defendant merely denied the title of the plaintiff. Rather, the defendant claimed title over the property in question on the basis of documents which have been proved to be forged and fabricated. The moment defendant propounded documents setting up title, the issue in question went out of the realm of the Rent Controller. Rent Controller was not competent to try the question of title. Apart from that, no evidence was led by the defendant to prove that the property in question was within the municipal limits and was thus governed by State Rent Act. The Trial Court specifically held that no evidence was led by the defendant on issues No.2 to 5 which includes issue No.3. I may hastenly add here that though defendant is permitted to raise mutually contradictory pleas but cannot raise mutually destructive pleas. Till the defendant denies claim of the plaintiff denying attornment, the same is permissible under law. The moment tenant set sub title in own-self denying and defying the title of the plaintiff, the plea attains colour of mutually destructive plea *viz-a-viz* plea of tenancy. In other words, once tenant sets up title in his own-self, he

2024:PHHC:089213



cannot be allowed to turn around and claim tenancy to oust the jurisdiction of the Civil Court.

13. Keeping in view the aforesaid facts, this Court does not find any reasons to interfere in the well reasoned judgements and decrees passed by the Courts below. Consequently, the instant second appeal is dismissed.

July 17, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No