

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****131****RSA-402-2024 (O&M)****Date of Decision : 23.10.2024**

Krishna Devi

....Appellant

VERSUS

Bimla Devi and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parveen Kaushik, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the defendant-appellant challenging the judgment and decree dated 12.10.2022 passed by the Trial Court and the judgment and decree dated 29.11.2023 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for permanent injunction averring in the plaint that the plaintiff-respondents were in possession of their respective plots measuring 50 sq. yards each, total measuring 100 sq. yards comprised in Khara No.3093, situated at Railway Line Paar behind Barahiwala Rasta within the Municipal Limits of Bahadurgarh, District Jhajjar by virtue of sale deed Nos.7756 and 7757 dated 17.12.2008 duly executed and registered in the office of the Sub-Registrar Bahadurgarh. The dimensions and boundaries were also given in the plaint. It was further pleaded that in the last week of November 2015 the defendant-appellant started asserting his

right over the suit property on the basis of a sale deed No.6733 dated 16.01.2007, without any right, title or interest in the suit property. Since the defendant-appellant did not desist from her illegal acts and tried to dispossess the plaintiff-respondents, hence, the present suit. On notice the defendant-appellant herein filed her written statement raising preliminary objections regarding locus standi, maintainability, estoppel, cause of action, mis-joinder and non-joinder of necessary parties, suppression of material facts and limitation etc. On merits it was denied that the plaintiff-respondents were owners in possession over the suit property. It was pleaded that the suit property is part and parcel of Khasra No.2644 and the plaintiff-respondents had no concern with the same. It was further the case set up that Khasra No.3093 is situated in another colony and area. It was further pleaded that due to typographical error the Gali has wrongly been shown in the east and south in the sale deed of the defendant-appellant bearing No.6637 dated 16.01.2007. It was further the case that the defendant-appellant was owner of one plot measuring 100 sq. yards which was purchased by her vide sale deed dated 16.01.2007 and mutation No.5436-A dated 24.03.2008 had been entered and sanctioned in her favour. It was further the case that the plot of the defendant-appellant forms part of Khasra No.2644 and after purchasing the plot the defendant-appellant constructed its four walls and filled earth and also installed an iron gate over the plot measuring 100 sq. yards. It was further the case that the defendant-appellant was a bonafide purchaser. A counter-claim was also filed by the defendant-appellant wherein it was reiterated that the defendant-appellant was a

bonafide purchaser of a plot measuring 100 sq. yards being 2/69th share i.e. 0 Bigha 02 Biswas Kham out of the land compromised in Khewat No.1769, Khasra No.2644 situated in the area of Railway Line Paar, Bahadurgarh, District Jhajjar. It was further averred in the counter-claim that after purchasing the plot the defendant-appellant constructed its four walls and installed an iron gate. It was further the case set up in the counter-claim that the plot in question was not covered by sale deed Nos.7756 and 7757 and it was not part and parcel of Khasra No.3093. The prayer in the counter-claim was further that the sale deed Nos.7756 and 7757 dated 17.12.2008 are illegal, null and void. On the basis of pleadings of the parties the following issues were framed :

1. Whether plaintiffs are entitled for the relief of permanent injunction as prayed for ? OPP

1A. Whether the defendant is entitled for the relief of permanent injunction as prayed for in the counter-claim?
OPD

2. Whether plaintiffs have no locus standi and cause of action to file the present suit ? OPD

3. Whether the suit of the plaintiffs is not legally maintainable ? OPD

4. Relief.

3. The Trial Court vide judgment and decree dated 12.10.2022 decreed the suit and dismissed the counter-claim filed by the defendant-appellant. Aggrieved by the same, one single appeal was filed by the

defendant-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 29.11.2023. Hence, the present regular second appeal.

4. Learned counsel for the defendant-appellant would contend that the suit has been decreed primarily on the basis of the report of the Local Commissioner and that the defendant-appellant was in possession of the suit property. It is further the contention that the sale deed of the defendant-appellant is prior to that of the plaintiff-respondents.

5. Heard.

6. In the present case the Trial Court had appointed a Local Commissioner who submitted his report dated 13.03.2021 wherein it was clearly mentioned that the property detailed and described in the sale deed Nos.7756 and 7757 dated 17.12.2008 (Ex.P2 and Ex.P4) was part and parcel of Khasra No.3093 and the property detailed and described in the sale deed dated 6737 dated 16.01.2007 (Ex.D5) comprised in Khasra No.2644 does not adjoin Khasra No.3093. It is to be noticed that the defendant-appellant herein refused to sign the attendance-sheet when the Local Commissioner prepared the report. Further still, no objections were ever filed to the report of the Local Commissioner. Both the Courts concurrently found that there was not an iota of evidence led by the defendant-appellant regarding possession of the defendant-appellant over the suit property. It has further come in evidence of the plaintiff-respondents that the boundary walls and iron gate were already in existence over the suit property at the time of purchase by them.

7. In view of the above, no fault can be found with the judgments and decrees passed by the Courts. I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.10.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO