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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA-886-2024 (O&M)  
Reserved on : 01.04.2024  
Date of decision : 24.04.2024

Amit Kohli and Another ... Appellant(s)  
  
Versus  
  
Seema Walia and Another ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Puneet Kumar Bansal, Advocate for the appellants.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants challenging the judgments and decrees dated 31.10.2019 and 06.12.2023 passed by the Trial Court and the First Appellate Court, respectively. The Trial Court decreed the suit for possession filed by the plaintiff-respondents and the First Appellate Court dismissed the appeal of the defendant-appellants.
2. The present case has a chequered history and hence facts need to be detailed before advertng to the merits of the case. The present case pertains to the front room and the back room on the ground floor of House No.9 Sector 15-A, Chandigarh. The plaintiff-respondent No.1 is the owner of House No.9 Sector 15-A, Chandigarh having purchased the same vide

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sale deed dated 03.02.1997. The defendant-appellant No.2 - Deepak Kohli - is the brother-in-law of Devinder Walia, the husband of the plaintiff-respondent No.1, being married to his sister. The defendant-appellant No.2 had some matrimonial issues with his wife Geeta Rani which led to prolonged litigation leading to a divorce. On humanitarian grounds, the defendant-appellant No.2 requested the plaintiff-respondent No.1 and her husband to allow him to use the top floor of the house in question for a period of 7 to 8 months. Subsequently, he turned dishonest and filed a Civil Suit bearing No.137 dated 31.05.2000 impleading plaintiff-respondent No.1 and her husband as defendants in the suit. The suit was for permanent injunction and for restraining plaintiff-respondent No.1 herein from dispossessing him from the top floor and one room on the ground floor i.e. back room adjoining House No.8 Sector 15-A, Chandigarh. On 31.05.2000 an FIR was lodged being FIR No.158 by the plaintiff-respondent No.1 on the ground that defendant-appellant No.2 had illegally trespassed into the back room situated on the ground floor of House No.9 Sector 15-A, Chandigarh. The said suit being Civil Suit No.137 filed by the defendant-appellant No.2 was dismissed on 28.04.2005, however, the premises were not restored to plaintiff-respondent No.1. Meanwhile, the defendant-appellants had broken open the locks and occupied the front room on the ground floor of House No.9 Sector 15-A, Chandigarh adjoining House No.8 Sector 15-A, Chandigarh. A notice was also issued on 28.01.2001 to the defendant-appellants to vacate the top floor of the house in question. Since the top floor of the house in question was not vacated, a civil suit was filed by the plaintiff-respondent No.1 on 22.05.2001 which was decreed vide

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judgment and decree dated 18.01.2005 and damages to the extent of Rs.500/- per month were awarded. Two appeals were preferred, one by the defendants therein and one by the plaintiffs. Both the appeals were disposed off by the First Appellate Court vide judgment and decree dated 03.03.2006 with a modification only to the damages awarded. Aggrieved by the said judgment and decree, a regular second appeal was preferred by defendant-appellant No.2 herein being RSA No.2550 of 2006 [Deepak Kohli vs. Seema Walia] which was dismissed vide order dated 13.07.2006. Subsequently, after a long drawn litigation, in execution the possession of the top floor of the house in question was given to the plaintiff-respondent No.1. Defendant-appellant No.2 also filed a suit claiming himself to be owner to the extent of 40% share in House No.9 Sector 15-A, Chandigarh. It was the case set up by him that he had contributed monetarily towards purchase of the house in question and was therefore owner to the extent of 40%. This suit was dismissed. Qua the two rooms on the ground floor of the house in question, the defendant-appellant No.1 - Amit Kohli - filed a suit for permanent injunction restraining plaintiff-respondent No.2 - Kanchan Sharma - from dispossessing him from the front room of House No.9 Sector 15-A, Chandigarh forcibly except in due course of law. This civil suit was dismissed vide judgment and decree dated 22.10.2010. In the interregnum, the plaintiff-respondent No.1 had got registered an FIR No.349 of 2006 on the ground that the locks of the front room of House No.9 Sector 15-A, Chandigarh had been broken and a board had been hung by defendant-appellant No.2. At the time when the issue regarding the breaking open the locks of the front room was pending before the Police, a rent note was

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produced showing that plaintiff-respondent No.2 - Kanchan Sharma - who was the GPA of Seema Walia (plaintiff-respondent No.1) had rented out the room to defendant-appellant No.1 at a monthly rental of Rs.800/-. The plaintiff-respondent No.2 - Kanchan Sharma - had made it clear that she had not executed any such rent note nor it bore her signatures. Eventually, it was found that the defendant-appellant No.1 - Amit Kohli - could not prove that he was the tenant in the front room of House No.9 Sector 15-A, Chandigarh and that the rent deed produced by him had been prepared by forging signatures. In July 2016 the plaintiff-respondents filed the present suit for possession of the front room and back room on the ground floor of House No.9 Sector 15-A, Chandigarh on the ground that the defendant-appellants were in unauthorized possession of the same. Upon notice, various objections were taken by the defendant-appellants including that they were owners to the extent of 40%. Further plea of being a tenant was also raised. On merits it was the case set up that the sale deed in favour of plaintiff-respondent No.1 was executed with the financial help from defendant-appellant No.2. It was also averred that they had business transactions and had close relations. Further plea of adverse possession was also raised. Replication was filed reiterating the averments made in the plaint and denying those of the written statement.

3. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for suit for possession ? OPP

2. Whether the plaintiff is entitled for mandatory injunction and damages, as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable ? OPD
4. Whether the plaintiff has not approached the court with clean hands ? OPD
5. Whether no cause of action arose in favour of plaintiff ? OPD
6. Whether the suit is bad for non-joinder of parties ? OPD
7. Relief.

4. The Trial Court vide judgment and decree dated 31.10.2019 partly decreed the suit of the plaintiff-respondents directing the defendant-appellants to hand over vacant possession of the premises in dispute within a period of three months. However, the suit qua *mesne* profits was dismissed on the ground that no witness or evidence had been brought on the record qua the said issue. Aggrieved by the same, the defendant-appellants preferred an appeal and cross-objections were also preferred by the plaintiff-respondents. The First Appellate Court vide judgment and decree dated 06.12.2023 dismissed the appeal filed by the defendant-appellants and allowed the cross-objections of the plaintiff-respondents holding the plaintiff-respondents entitled to the damages @ Rs.10,000/- per month for the use and occupation of the premises from the date of filing of the suit till realization. Two appeals have been preferred before this Court by the defendant-appellants. The present being RSA No.886 of 2024 has been

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preferred challenging the dismissal of the appeal filed by the defendant-appellants and the second being RSA No.893 of 2024 has been filed challenging the judgment and decree of the First Appellate Court allowing the cross-objections filed by the plaintiff-respondents. In RSA No.893 of 2024 notice of motion has been issued and the present RSA No.886 of 2024 was reserved on 01.04.2024 after hearing lengthy arguments by the learned counsel for the defendant-appellants.

5. Learned counsel for the defendant-appellants submitted that the impugned judgements and decrees are illegal and erroneous and that the suit of the plaintiff-respondents deserved to be dismissed. It is contended that defendant-appellant No.2 is the owner to the extent of 40% in the house in question and therefore there was no occasion to decree the suit for possession. It is further the contention of the learned counsel that defendant-appellant No.2 has been in possession of the back room for the past twenty years and in the front room defendant-appellant No.1 is a tenant since 10.10.2005. It is further the contention of the learned counsel that defendant-appellant No.2 had become owner by way of adverse possession.

6. I have heard the learned counsel for the defendant-appellants.

7. In the present case admittedly there is a sale deed in favour of plaintiff-respondent No.1. Multiple litigations have been initiated by both the sides. Previously litigation was initiated qua top floor of the house in question by the plaintiff-respondents which was decreed by the Trial Court on 18.01.2005. The appeal by the defendant-appellants was dismissed by the First Appellate Court and thereafter the regular second appeal being RSA No.2550 of 2006 was dismissed by this Court on 13.07.2006. The argument

of the learned counsel for the defendant-appellants that defendant-appellant No.2 had become owner of the back room by way of adverse possession deserves to be rejected. A perusal of the facts narrated above clearly reveals that there has been a long drawn litigation between the parties and in no manner can it be said that the possession of the defendant-appellants was open, hostile and continuous. It has been observed by the First Appellate Court that DW-1 and DW-2 i.e. the defendant-appellants had stepped into the witness box and their cross-examination reveals that they are not the tenants in the premises in dispute. It has also been observed that defendant-appellant No.2 had admitted in his cross-examination that plaintiff-respondent No.1 was the recorded owner of the house in question. Long and continuous possession by itself cannot be termed as adverse possession so as to perfect title within the meaning of Article 65 of the Limitation Act. A person claiming adverse possession must show clear and cogent evidence to substantiate claims of adverse possession. A person who claims adverse possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. Adverse possession requires that the adverse possessor has to establish the essential requirements of adverse possession, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor. These

requirements have not been fulfilled by the defendant-appellants and there is no material on the record to hold them in adverse possession of the premises in dispute.

8. There is nothing pointed out from the record which would establish the plea that the defendant-respondents had contributed monetarily when the house in question was purchased by the plaintiff-respondent No.1. The plea that the defendant-appellants are owners to the extent of 40% having contributed at the time of purchase has been rejected by both the Courts and nothing was produced in their evidence by the defendant-appellants to establish this plea. Learned counsel for the defendant-appellants has not been able to show any document to prove the ownership or even the tenancy of the defendant-appellants in the premises in dispute. The sale deed dated 03.02.1997 (Ex.P1) and the mutation (Ex.P2) in favour of the plaintiff-respondent No.1 establishes her ownership of the house in question and the defendant-appellants have been unable to show in what capacity they were in possession of the premises in dispute. The Trial Court has noticed that the defendant-appellant No.2 - Deepak Kohli - while appearing as DW1 admitted that he filed a civil suit against the plaintiff-respondent No.1 for declaration that he is owner to the extent of 40% share and he is in possession of entire barsati floor and middle room on the right side adjoining House No.8 and that the said civil suit had been dismissed.

9. The learned counsel for the defendant-appellant has not been able to convince this Court that the defendant-appellants were legally occupying the premises in dispute. Infact, the case set-up by the defendant-appellants is full of contradictions and they were unable to establish their

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plea of tenancy, ownership or adverse possession. That being so, no fault can be found with the judgments and decrees of the Trial Court and the First Appellate Court whereby the appeal of the defendant-appellants has been dismissed and they have been directed to hand over vacant possession of the premises in dispute to the plaintiff-respondents. No other point has been argued.

10. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The regular second appeal being wholly devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

24.04.2024  
Yogesh Sharma

( ALKA SARIN )  
JUDGE  
NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO