

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227

RSA No.2774 of 1997

Date of Decision : 26.04.2024

Kamla Devi

....Appellant

VERSUS

Subhash Chand (deceased) through LRs and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Munish Gupta, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal pertains to the year 1997 and has been listed for motion hearing as per the standing instructions being 25 years old appeal. As per the office report, the counsel for the parties have duly been informed. However, as noticed in the order dated 21.12.2023, though counsel for the appellant undertook to get service of the respondents effected through *dasti* process yet the appellant nor his counsel did not collect the *dasti* notices. For the reasons to follow, the presence of the respondents would not be required.
2. The present appeal has been preferred by the defendant-appellant challenging the judgment and decree dated 12.10.1993 passed by the Trial Court and the judgment and decree dated 01.04.1997 passed by the First Appellate Court.
3. The brief facts relevant to the present case are that a suit for possession was filed by the plaintiff – Amar Nath – for possession of land measuring 07 marlas against the defendant – Kamla Devi. It was averred in

the plaint that the land was previously owned by the Central Government and that the plaintiff-respondent purchased land measuring 11 marlas from the Central Government and deposited the requisite amount. The land of the defendant-appellant is adjoining the land of the plaintiff-respondent towards the eastern side. It was further averred that the defendant-appellant had encroached upon 07 marlas of land of the plaintiff-respondent asserting herself to being the owner of the same in which the plaintiff-respondent had planted trees and also constructed a bathroom and had installed a hand-pump. On notice the defendant-appellant appeared and filed the written statement taking the preliminary objection qua *locus standi* and that the plaintiff-respondent was never in possession of the suit land. On merits, it was admitted that the suit property was in the ownership of the Central Government. It was further stated that the defendant-appellant was in possession of the suit land for the last 30 years and that the revenue record was incorrect. Replication was not filed.

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

1. Whether the plaintiff is entitled for a decree for the possession of the suit land ? OPP
2. Whether the suit of the plaintiff is not maintainable in its present form ? OPD
3. Whether the plaintiff has no locus standi to file the present suit ? OPD

4. Whether the site plan filed by the plaintiff is incorrect ? OPD

5. Whether the civil court has got no jurisdiction to try the present suit ? OPD

6. Relief.

5. The Trial Court vide judgment and decree dated 12.10.1993 decreed the suit on the ground that Ex.P1 shows that the plaintiff-respondent had purchased 11 marlas of land from the Central Government. Further reliance was placed on the report of the Local Commissioner dated 22.10.1991 (Ex.P3) wherein it was stated by the Local Commissioner, namely, Duni Chand, that the defendant-appellant was in illegal possession of 03 marlas of land in which the plaintiff-respondent had planted trees and also constructed a bathroom and had installed a hand-pump. It was found that the signatures of both the parties were very much there on Ex.P3 i.e. the report of the Local Commissioner. The revenue record also supported the case of the plaintiff-respondent. It was further found that though the stand taken by the defendant-appellant was that she had been in possession of the suit property for 30 years, however, the same was not tenable in the absence of any evidence. Aggrieved by the said judgment and decree passed by the Trial Court an appeal was preferred by the defendant-appellant which appeal was also dismissed vide judgment and decree dated 01.04.1997.

6. Learned counsel for the appellant would contend that the judgments and decrees of both the Courts are illegal and erroneous and infact the suit of the plaintiff-respondent deserved to be dismissed. It is

contended that the defendant-appellant has been in possession of the suit land and that she has constructed a house on the suit land.

7. Heard.

8. In the present case both the Courts concurrently found that vide Ex.P1 the plaintiff-respondent had purchased 11 marlas of land from the Central Government. The report of the Local Commissioner (Ex.P3) clearly shows that the defendant-appellant was in illegal possession of 03 marlas of land. The said report was prepared in the presence of both the parties and also bore their signatures. The revenue record also supported the case of the plaintiff-respondent. The stand taken by the defendant-appellant that she has been in possession of the suit land for the last 30 years was not substantiated by any evidence. Even before this Court learned counsel for the defendant-appellant has not been able to show an iota of evidence to even remotely suggest that the defendant-appellant has been in possession of 03 marlas of land qua which the suit has been decreed. No other point was argued.

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

26.04.2024
jk

(ALKA SARIN)
JUDGE

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