

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.5392 of 2019 (O&M)  
DATE OF DECISION : 15.01.2024

Basanti Devi .....Appellant  
versus  
Dr. Shri Bhagwan and Another .....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Surinder Gandhi, Advocate for the appellant

ALKA SARIN, J. (Oral):

CM-15316-C-2019:

For the reasons stated in the application, the delay of 6 days in  
filing the appeal is condoned.

CM disposed off.

CM-15315-C-2019:

For the reasons stated in the application, the delay of 20 days in  
re-filing the appeal is condoned.

CM disposed off.

RSA-5392-2019:

1. This is an appeal preferred by the plaintiff-appellant  
challenging the judgments and decrees dated 28.03.2018 and 24.04.2019  
passed by the Trial Court and the First Appellate Court, respectively.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for permanent injunction on the ground that she was owner in possession of House No.104-A measuring 86.23 square yards situated at Kartarpura, Rohtak, bounded as under :

East : 12' 5" Street

West : 20' 4" + 9" Street

North : 14' 8" + 29' 3" Street

South : 14' 7" + 7' + 30' 8" House of Sh. Devi Lal

It was further averred that the plaintiff-appellant had purchased the said house from one Roop Lal son of Gurmukh resident of Kartarpura, Rohtak vide Sale Deed No.6884 dated 09.10.2013. It was further the averment that the defendant-respondents had been threatening to interfere in the possession of the plaintiff-appellant and were trying to dispossess her from the same and that they had no right or title to interfere in her possession. Hence, the suit for permanent injunction.

3. On notice, the defendant No.1-respondent appeared and filed his written statement raising preliminary objections regarding maintainability, cause of action and the plaintiff-appellant not having approached the Court with clean hands. On merits, it was stated that the plaintiff-appellant is neither owner nor in possession of House No.104-A measuring 86.23 square yards situated at Kartarpura, Rohtak as alleged. The dimensions of the house as given in the plaint were also stated to be incorrect. It was further stated that the site-plan was also incorrect. Further, the stand taken by the defendant-respondent No.1 was that he is the owner

and in physical possession of House No.105/2, Kartarpura, Rohtak measuring 90.37 square yards, bounded as under :

East : 12'-0" Gali

West : 20'-6" Gali

North : 44'-1-1/2" Gali

South : 14'-2" + 36'-6" House of Devi Lal and Rup Lal

The said house was purchased vide Sale Deed No.8812 after paying the sale consideration. It was further averred that electricity connection, record of assessment of house tax of Municipal Committee, Rohtak, water connection, sewerage connection and site plan sanctioned by the Municipal Committee, Rohtak are all in the name of wife of defendant-respondent No.1 and that there is no property in existence bearing House No.104-A at the spot. Replication was filed reiterating the stand taken in the plaint. From the pleadings of the parties, the following issues were framed.

1. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
4. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD
5. Whether the plaintiff has not come to the Court with clean hands and has suppressed true and material facts?  
OPD

6. Relief.

4. The Trial Court on the basis of the pleadings and the evidence led came to the conclusion that there was no documentary evidence on the record to show that House No.104-A existed at the spot. The plaint was accordingly dismissed vide judgment and decree dated 28.03.2018 as the plaintiff failed to prove her case. Aggrieved by the said judgment and decree an appeal was preferred which was also dismissed by the First Appellate Court vide judgment and decree dated 24.04.2019.

5. Learned counsel for the plaintiff-appellant would contend that both the Courts below have erred in dismissing the suit of the plaintiff-appellant and that there is sufficient evidence on the record to show that House No.104-A was in existence. The learned counsel has further relied upon the Local Commissioner's Report to contend that the Local Commissioner in his report had stated that House No.104-A was in a dilapidated condition and it was found locked at that point of time.

6. Heard the learned counsel for the plaintiff-appellant.

7. In the present case, PW1-Ravinder, Clerk had stated in his cross-examination that no order qua House No.104-A had been passed in the Assessment Year 2001-2002. The property bearing No.105/2 had been transferred by Badam Singh in favour of wife of the defendant-respondent No.1 and as per the order of the DMC an entry was made in this regard on 10.01.2014, but no entry regarding Plot No.104-A was incorporated in any municipal record. It was further held by the First Appellate Court that the

learned counsel for the plaintiff-appellant was unable to explain as to why no entry was made in favour of the plaintiff-appellant when she claimed ownership on the basis of a registered sale deed. Before the First Appellate Court the counsel for the plaintiff-appellant had taken a plea that no notice was given by the Local Commissioner before preparing the report, Ex.PW8/B. However, no objections were filed to the said report.

8. It is pertinent to note that defendant-respondent No.1 had produced on record statement of Harish Kumar, ZTO, Municipal Committee Rohtak in a contempt proceeding as Ex.D1. In the said statement, he disclosed that an enquiry had been conducted against Jaswant Singh, Tax Superintendent as per order dated 24.09.2014. Rajiv Vij, Building Inspector, Municipal Committee, Rohtak had also appeared as witness in those proceedings. In his statement, Ex.D2, which was produced on record, he had stated that defendant-respondent No.1 had got the site-plan qua Plot No.105, Kartarpura, Rohtak passed from the Municipal Committee. The said site-plan was produced on the record as Ex.D3. The order dated 24.09.2014 was also produced on record as Ex.D4 wherein it was found that in the enquiry against Jaswant Singh, Tax Superintendent he had illegally and unauthorisedly added unit No.104-A between the unit Nos.104 and 105, whereas, the owners of unit Nos.104 and 105 were in continuous occupation of their respective portions and no unit bearing No.104-A was in existence at the spot. It has further been held by the First Appellate Court that the said documents were not disputed by the plaintiff-appellant. The plaintiff-appellant has further failed to prove the title of the vendor Roop Lal.

9. In view of the above, I do not find any merit in the present appeal. No question of law, much less a substantial question of law, arises in the present appeal. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.01.2024  
*parkash*

**(ALKA SARIN)**  
**JUDGE**

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| <p><u>NOTE:</u><br/>Whether speaking/non-speaking: Speaking<br/>Whether reportable: YES/NO</p> |
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