

RSA-24-2019 (O&M)

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106

RSA-24-2019 (O&M)
Reserved on : 29.04.2024
Date of Decision : 30.04.2024

Charno DeviAppellant

VERSUS

Jeet Ram & Ors.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Naveen Batra, Advocate for the appellant.

ALKA SARIN, J.

CM-78-C-2019

For the reasons stated therein, the delay of 6 days in refiling the present regular second appeal is condoned. Application stands disposed off.

RSA-24-2019

1. The present appeal has been preferred by the plaintiff-appellant challenging the concurrent findings recorded by the Trial Court vide judgment and decree dated 28.03.2018 and the First Appellate Court vide judgment and decree dated 06.07.2018 dismissing her suit for permanent injunction.
2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction claiming that she is exclusive owner in possession of the suit land forming part of Khasra No.223 (0-4)

Gair Mumkin abadi. It was averred that the plaintiff-appellant had raised a tin shed, bathroom, pegs and khurli in the suit land about 20 years back and that the defendant-respondents were strangers to the suit land having no right, title or concern with the same. It was further averred that the defendant-respondents wanted to raise construction or structure on the suit land and change its nature forcibly and illegally. Hence, the suit. On notice the defendant-respondent Nos.1 and 2 filed joint written statement taking preliminary objections of maintainability and concealment of facts. On merits it was denied that the plaintiff-appellant was the exclusive owner in possession of the suit land. It was pleaded that the plaintiff-appellant was the owner, co-sharer of Khasra No.224 which was adjoining to the khasra number in dispute and that she had no concern with any part of the property of Khasra No.223 which was in exclusive possession of the defendant-respondent No.1 and that the plaintiff-appellant had her property towards the southern side comprised in Khasra No.224. It was submitted that previously the defendant-respondent No.3 was in exclusive possession of Khasra No.223 being proprietor of the village and he had got constructed a small temple of Balmiki Ji over some part of this khasra number and later on he had transferred the property in favour of the defendant-respondent No.1 and put the defendant-respondent No.1 in possession and since then the defendant-respondent No.1 was in exclusive possession of Khasra No.223 without any objection from any quarter and that the plaintiff-appellant had herself admitted the possession of the defendant-respondent No.1 over Khasra No.223 in proceedings under Section 107/151 CrPC. The defendant-respondent No.3 filed separate written statement. Replication was filed

controverting the averments made in the written statement and reiterating those made in the plaint.

3. On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

1. Whether the plaintiffs are entitled to permanent injunction as prayed for in the plaint ? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Relief, if any.

4. The Trial Court vide judgment and decree dated 28.03.2018 dismissed the suit. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 06.07.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant was the owner in possession of the suit land and that both the Courts erred in dismissing her suit. It is further the contention that the defendant-respondents have no concern with the suit land and as such the suit should have been decreed.

6. I have heard the learned counsel.

7. Both the Courts have found that there was no evidence on record to show that the suit land was owned by the plaintiff-appellant or that she was in exclusive possession thereof. The plaintiff-appellant has woefully failed to show her exclusive possession over the suit land. Both the Courts have concurrently found as a matter of fact that the plaintiff-appellant had

RSA-24-2019 (O&M)

4

failed to prove her possession over the suit land. It is trite that in a suit for injunction it is incumbent on the plaintiff to prove his possession over the suit property. Though the plaintiff-appellant examined PW-2 to depose that the plaintiff-appellant had purchased the suit land from one Parkash but no sale deed was produced on the record. The plaintiff-appellant did not step into the witness box herself. Even before this Court the learned counsel for the plaintiff-appellant has not been able to point out anything on the record to establish the exclusive possession of the plaintiff-appellant over the suit land. Counsel for the plaintiff-appellant has been unable to dislodge the findings of fact recorded by both the Courts. No other point was argued.

8. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The present appeal is devoid of any merit and is dismissed. Pending applications, if any, also stand disposed off.

30.04.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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