

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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RSA-145-2024 (O&M)
Date of Decision: 16.01.2024.

Satya Devi ...Appellant.

Versus

Mohinder Kaur and anotherRespondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Tejwinder Singh Hundal, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/ defendant No.2 Satya Devi against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiff was decreed.

2. Brief facts of the case as per plaint are that defendant No.1 is the brother of plaintiff, whereas the appellant/ defendant No.2 is the wife of defendant No.1. It has been alleged that defendant No.1 was the owner in possession of the house in dispute on the basis of agreement dated 24.06.2013 executed between defendant No.1 and the previous owner of the said house. In the month of September, 2015, defendant No.1 approached the plaintiff and requested her that he needed money and wanted to sell the house in dispute and she accepted his offer and the deal was finalized for consideration of Rs.7,50,000/-on 10.09.2015. Defendant No.1 sold the suit

property to plaintiff after receiving Rs.7,50,000/- from plaintiff and one agreement was executed between plaintiff and defendant No.1 in presence of marginal witnesses. Then defendant No.1 sought some time to vacate the house in dispute till finding the alternate suitable accommodation. The plaintiff allowed him to reside in the said house for the time sought by him. When after about five months, plaintiff requested him to vacate the house then defendant No.1 lingered on the matter on one pretext or other. Thereafter many times plaintiff approached the defendants to vacate the house but in vain. When the plaintiff visited the house in dispute then defendant No.2, who was present there threatened her to stay away from the suit property and claimed that she was having the exclusive right over the same. When the plaintiff contacted defendant No.1 and asked about the behaviour of defendant No.2 then he told the plaintiff that he had already left the house in question and had started residing at Kartarpur, Tehsil and District Jalandhar. He was having no concern with the suit property and she could obtain the possession of the house in question from defendant No.2. It has been alleged that the defendants in connivance with each other are not vacating the property in dispute and have cheated the plaintiff.

3. The suit of plaintiff was decreed by the trial Court, vide judgment and decree dated 18.03.2023. The appeal preferred by defendant No.1 before the First Appellate Court was dismissed, vide judgment and decree dated 27.10.2023. Hence, the present Regular Second Appeal.

4. Learned counsel for the appellant/ defendant No.2 has contended that plaintiff and defendant No.1 have joined hands being real brother and sister, to eject the appellant from matrimonial house. The

appellant is the wife of defendant No.1. He has contended that the relations between the defendants are not cordial and defendant No.1 is residing at Karatarpur whereas appellant is residing in the house in dispute. He has contended that agreement dated 10.09.2015 has been created by defendant No.1 in favour of the plaintiff, only to defeat the rights of defendant No.2 to stay in the house in dispute. He has contended that the said agreement is without any consideration.. When defendant No.1 himself has got no title of the suit house in his favour, then no decree for specific performance for the agreement in question can be passed in favour of the plaintiff. The said agreement is an unregistered document and is not inadmissible in evidence. It was also denied by plaintiff and defendant No.1 that defendant No.2 was legally wedded wife of defendant No.1 and she has no right to retain possession of the suit property. He has relied upon the judgment of this Court in RSA-417 of 2011 titled as **Ram Kumar Vs. Satbir Singh**, decided on 27.01.2012 and **Basant Kaur Vs. Akki @ Basant Kaur, 2017(3) R.C.R (Civil) 474.**

5. I have heard learned counsel for the appellant and gone through the records thoroughly.

6. The plaintiff-Mohinder Kaur has placed on record agreement to sell dated 10.09.2015 as Ex.P-2, as per which defendant No.1 Mohal Lal had sold the suit property to the plaintiff. Agreement dated 24.06.2013 Ex.P-1 has also been produced on record vide which defendant No.1 had purchased the said property from the previous owner. As per Ex.P-3 the electricity connection is also installed in the name of defendant No.1 Mohan Lal. It is also not disputed that suit property falls within the *Lal Lakir*. It is

trite law that property falling in *Lal Lakir* is transferred by way of transfer of possession and not registered sale deed is required for the same. Defendant No.2 claims that she has a right to stay in the suit property and to use the same being wife of defendant No.1. But it has been denied by plaintiff and defendant No.1 that she is legally wedded wife of defendant No.1. There is nothing on record that any proceedings against defendant No.1 qua any matrimonial relief are pending. But in the present suit it is not to be decided that whether defendant No.2 is legally wedded wife of defendant No.1 or not. Even if she is considered as wife of defendant No.1 even then they have to adhere to the terms of agreement dated 10.09.2015, Ex.P-2 vide which all the rights have already been transferred in favour of the plaintiff. So, in these circumstances it has not been proved by defendant No.2 that how she is entitled to the possession over the suit property and to use and enjoy the same.

7. The case law cited by learned counsel for the appellant is also of no help to him when the property in dispute falls within the *Lal Lakir*.

8. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

9. Appeal stands dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

16.01.2024.

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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No