



RSA-2560-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2560-2024

Date of Decision : 07.01.2025

Neelam

..... Appellant

Versus

Abhishek and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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

VIKRAM AGGARWAL, J (ORAL)

1. The defendant (Smt. Neelam) assails the judgment and decree dated 18.09.2024, passed by the Court of learned District Judge, Pathankot, dismissing the appeal against the judgment and decree dated 19.07.2018, passed by the Court of learned Addl. Civil Judge (Senior Division), Pathankot vide which the suit for possession filed by the respondents-plaintiffs was decreed.

2. The respondents-plaintiffs (Abhishek and Ankur) are the sons of Late Vijay Kumar. After the death of the mother of the respondents-plaintiffs, Vijay Kumar had solemnized marriage with the appellant-defendant. The property in dispute is a residential house constructed over a plot measuring 03 marlas (fully described in the plaint), situated in the revenue estate of Village Kuthiali, Had Bast No.341 (Teachers Colony),



Tehsil and District Pathankot. The respondents-plaintiffs filed a suit for possession qua the said house (hereinafter referred to as 'the disputed house') claiming title on account of sale deed dated 14.08.2007 having been executed in their favour by Kamla Devi, who was their paternal grand mother. It was the case of the respondents-plaintiffs that mutation had also been sanctioned on the basis of the said sale deed in their favour. The appellant-defendant had been permitted to use the disputed house as a licensee by the respondents-plaintiffs. The respondent-plaintiff Ankur was married and had a minor daughter and had no place to live, as a result of which he was residing in the house of his uncle as a licensee. The other respondent-plaintiff namely Abhishek was unmarried but was planning to get married, on account of which, he was in urgent need of the disputed house. The appellant-defendant was requested to vacate the disputed house which she refused. Accordingly, a notice dated 26.09.2014, terminating the licence of the appellant-defendant was issued to which no reply was received and accordingly, the suit was filed.

3. The suit was opposed by the appellant-defendant. Apart from certain preliminary objections, on merits, the basic stand taken was that the plot over which the disputed house had been constructed was purchased by her husband Vijay Kumar from his own funds and, thereafter, construction had also been raised by him only out of his own funds, for, his mother Kamla Devi was not earning and accordingly, did not have any funds to either purchase the plot or to raise construction. It was, therefore, averred that the husband of the appellant-defendant Neelam was the real owner of the disputed house. It was averred that since Kamla Devi and the respondents-



plaintiffs were unhappy on account of the marriage of Vijay Kumar with the appellant-defendant, they started quarreling with her on petty matters for which the parties arrived at a compromise many times. However, taking undue advantage of the fact that the plot was registered in the name of Kamla Devi, she transferred the disputed house to the respondents-plaintiffs despite the fact that the appellant-defendant is a poor lady blessed with only one son who was unemployed and there is no source of income or a place to live. It was also averred that the sale deed, if any, was ineffective and not binding on the rights of the appellant-defendant as the same was the result of a conspiracy with a view to oust her from the disputed house.

4. From the pleadings of the parties, following issues were framed:-
- 1) Whether the plaintiff is entitled for possession of the house as described in the head note, as prayed for ? OPP
 - 2) Whether the plaintiff is entitled to Permanent Injunction, as prayed for ? OPP
 - 3) Whether the suit of the plaintiff is not maintainable in present form ? OPD
 - 4) Relief.

Parties led their respective evidence.

5. The trial Court decreed the suit filed by the respondents-plaintiffs vide judgment dated 19.07.2018. An appeal was preferred by the appellant-defendant against the said judgment but the same was also dismissed vide judgment dated 18.09.2024, leading to the filing of the instant second appeal.

6. I have heard learned counsel for the appellant and have perused the record of the Courts below which was duly summoned.



7. Learned counsel for the appellant submits that both the Courts below had erred in decreeing the suit filed by the respondents-plaintiffs. It has been submitted that the plot over which the disputed house was constructed had been purchased by the husband of the appellant-defendant Vijay Kumar from his own funds and even the construction of the house had been raised by Vijay Kumar from his own funds. Learned counsel submits that neither Kamla Devi nor the respondents-plaintiffs were earning members which duly stands proved from the cross-examination of the witnesses. Learned counsel has referred to the statements of the witnesses as also other documents on record and has submitted that the appellant-defendant was wrongly non-suited by the Courts below.

8. I have considered the submissions made by learned counsel for the appellant.

9(i). Before adverting to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including *Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545*, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial questions of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019*



(3) *R.C.R. (Civil) 168* and *Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92* respectively.

9(ii). It was further held in the judgment of *Satyender and others Versus Saroj and others* (supra) that though the requirement of formulation of a substantial question of law is not necessary, yet Section 41 of the Punjab Courts Act requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the Courts below had failed to determine some material issue of law or custom or usage having the force of law. It was held that what was, therefore, important was still a “question of law”. It was also held that a second appeal was not a forum where the Court would re-examine or re-appreciate questions of fact settled by the trial Court and the Appellate Court. While holding so, the judgment in the case of *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. (supra)* was also considered.

10. Reverting to the facts of the case, registered sale deed dated 14.08.2007 executed in favour of the respondents-plaintiffs by Kamla Devi was produced on record as Ex.P-2 alongwith Jamabandi for the year 2001-2002 (Ex.P-4) which showed Kamla Devi to be the owner of the disputed house. Still further, legal notice dated 26.09.2014 vide which the licence was cancelled, was also produced on record as Ex.P-5, to which no response was given by the appellant-defendant. Though the appellant-defendant examined few witnesses, she could not lead any evidence to even remotely prove her case that her husband Vijay Kumar had purchased the plot in dispute from his own funds or that he had raised the construction of the house from his funds. The stand taken by the appellant-defendant was not supported by any



documents whereas the stand of the respondents-plaintiffs was duly proved by producing cogent evidence. Learned counsel for the appellant has not been able to raise any question of law and in fact, the findings recorded by the Courts below are pure findings of facts which cannot be gone into in second appeal as was laid down in the case of *Satyender and others Versus Saroj and others* (supra). It has to be borne in mind that howsoever hard the circumstances may be, matters have to be proceeded in accordance with law and once the respondents-plaintiffs were able to prove that they were the owners of the disputed house and the appellant-defendant was a licensee and further that the licence had been terminated by them, no right would be left with the appellant-defendant to continue in possession of the disputed house. The Courts below, therefore, did not commit any illegality in decreeing the suit filed by the respondents-plaintiffs.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

07.01.2025

mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No