

Before Anil Kshetarpal, J.

PUSHPA KHANNA—Appellant

versus

SAVITA OHRI AND OTHERS —Respondents

RSA No.3692 of 2015

February 11, 2019

Specific Relief Act, 1963—Ss. 37 and 39—Suit for Permanent injunction and Mandatory injunction—Whether a decree passed by court on basis of compromise can be allowed to be frustrated on failure of one of party to take appropriate steps in accordance with law?—Held, No—More than 3 years have elapsed, rights of plaintiff cannot be allowed to be frustrated particularly keeping in view fact that defendants do have a right of passage irrespective of fact that whether tenant has delivered vacant possession of premises or not—Further, once compromise arrived at by predecessor of respondent, she is bound by same.

Held that, more than 3 years have elapsed, the rights of the plaintiff cannot be allowed to be frustrated in this manner particularly keeping in view the fact that the defendants do have a right of passage irrespective of the fact that whether the tenant has delivered vacant possession of the premises or not. In the objection petition, it has been pleaded that respondent no.1 Savita Ohri is 75 years of age and residing on the first floor of the house using the main gate for her ingress and egress. In the considered view of this court, once a compromise has been arrived at by the predecessor of Savita Ohri, she is bound by the same. (Para 13)

Mohit Jaggi, Advocate
for the appellant.

K.S.Dadwal, Advocate
for the respondents.

ANIL KSHETARPAL, J.

(1) Plaintiff-appellant is in the regular second appeal against the judgments passed by both the courts below dismissing her suit for grant of decree for permanent injunction restraining the defendants not to pass through the property purchased by her and for mandatory injunction directing the defendants to close down the door marked as

'BC'.

(2) In the considered view of this court, question which arises for determinations is:-

“Whether a decree passed by the court on the basis of compromise can be allowed to be frustrated on the failure of one of the party to take appropriate steps in accordance with law.

(3) Some facts are required to be noticed.

(4) Four brothers, namely, Narinder Pal Ohri, Joginder Pal, Surinder Pal and Davinder Pal sons of Lala Ram Das were owners of a residential property. Sh. Narinder Pal Ohri sold to late Sh. Bhushan Lal Khanna a specified portion of the property vide sale deed dated 27.02.1984 against total payment of Rs.40,000/- Three brothers, namely, Joginder Pal, Surinder Pal and Davinder Pal challenged the aforesaid sale deed executed by their 4th brother Narinder Pal Ohri. During the pendency of the aforesaid suit, parties entered into a settlement and it was agreed that the purchaser late Sh. Bhushan Lal Khanna shall pay an amount of Rs.25,000/- to the plaintiffs in the aforesaid suit i.e. 3 brothers on 13.08.1987 and on payment of the amount the suit filed by the plaintiffs shall stand dismissed. However, as a temporary arrangement, it was ordered that the plaintiff shall have right to use a passage from a courtyard which is part of the property of late Sh. Bhushan Lal Khanna and others till plaintiffs evict their tenant Kamlesh Kumar. The relevant part of judgment dated 12.08.1987 passed by the learned trial court on the basis of compromise is extracted as under:-

“The parties have compromised. In accordance with statement of the parties, it is ordered that the defendant No.1 shall pay amount of Rs.25,000/- to the plaintiffs on 13.08.1987 and the suit shall stand dismissed on payment of this amount. However, if the defendant fails to pay the amount by tomorrow the suit of the plaintiff shall be decreed. It is further ordered that plaintiff shall however have right to use Deori for passage as shown in the site plan Ex.P.2, till he gets the possession of the rented property by eviction of this tenant, Kamlesh Kumar and to have the passage on the main road from the door of the said rented property. The parties shall bound by their statements. They are, however, left to bear their own costs.”

(5) It is undisputed that the aforesaid amount of Rs.25,000/- has been paid.

(6) However, these 3 brothers who were plaintiffs in the previous suit did not get their tenant evicted. Pushpa Khanna widow of late Sh. Bhushan Lal Khanna after a period of more than 20 years filed the present suit for granting decree for permanent injunction referred to above. The aforesaid suit was contested by the defendants disputing the filing of the first suit and the compromise arrived at. It was disputed by the defendants that any rider was placed on the rights of 3 brothers referred to above to have ingress and egress from the road through the courtyard of the plaintiff- appellant in the present suit.

(7) Both the courts on appreciation of the evidence have chosen to dismiss the suit on the ground that the defendants i.e. 3 brothers had made attempt to evict their tenant in which they have failed and now the plaintiff cannot compel the defendants to file a new eviction petition.

(8) At the time of motion hearing, it was contended by learned counsel for the appellant that the defendants already have a passage which opens on 15 feet wide street. Keeping in view the aforesaid fact, a Local Commissioner was appointed. He after inspecting the property, has reported as under:-

“7. During inspection it appeared that the respondents have a gate which is on the eastern side of the disputed property which opens on 15'0” wide street as it is evident from the photographs, same are annexed as **Annexure P-6** for the kind perusal of this Hon'ble Court.

8. That as per the site plan relied upon in this case, it shows only one opening/door on the western side of the premises whereas there is another opening/door on the eastern of the premises which is in possession of the respondents-party. The marked site plan in red colour showing the opening/door on the eastern side of the premises belonging to the respondent party, is annexed as **Annexure P-7** for the kind perusal of this Hon'ble Court, which is apparent from the photographs (Annexure P-6).”

(9) Objection to the aforesaid report has been filed.

(10) This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the

courts below and the record.

(11) It is undisputed that one brother Narinder Pal had sold the specified portion of the property to predecessor-in-interest of the plaintiff-appellant vide sale deed dated 27.02.1984. This sale was challenged by the defendants, 3 brothers of the vendor. During the pendency of the suit, the purchaser late Sh. Bhushan Lal Khanna agreed to by peace and paid Rs.25,000/- over and above the sale consideration with the hope that the interference by the defendants would stop. In the present case, defendants No.1 to 3 are heirs of Surinder Pal, who was party to the aforesaid compromise and defendant no.4 is Davinder Pal, who is also party to the previous suit and the compromise. It is apparent from the reading of the judgment which has been passed on 12.08.1987 that the defendants were given only temporary right for the time being to use the passage.

(12) Learned counsel appearing for the respondents has admitted that the tenant has already abandoned the portion of the house which was in his possession, however, he submits that another petition is being filed.

(13) In the considered view of this court, the defendants have not been fair either to the plaintiff or her predecessor or to the court. Once they had suffered a statement and received Rs.25,000/- over and above the sale consideration, they were bound by the statement. At present, more than 3 years have elapsed, the rights of the plaintiff cannot be allowed to be frustrated in this manner particularly keeping in view the fact that the defendants do have a right of passage irrespective of the fact that whether the tenant has delivered vacant possession of the premises or not. In the objection petition, it has been pleaded that respondent no.1 Savita Ohri is 75 years of age and residing on the first floor of the house using the main gate for her ingress and egress. In the considered view of this court, once a compromise has been arrived at by the predecessor of Savita Ohri, she is bound by the same.

(14) Accordingly, the question framed above is answered in favour of the appellant.

(15) In view thereof, the judgments and decrees passed by the courts below are set aside and the suit filed by the plaintiff shall stand decreed as prayed for.

(16) The regular second appeal is allowed.

(Ritambhara Rishi)