

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 2479 of 2013 (O&M)
Date of decision:- 07.07.2015

Savita and anr.

...Appellants

Versus

Suresh Kumar

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. A.S. Virk, Advocate
for the appellants.

RITU BAHRI J.

C.M. No. 7547-C of 2015

Application is allowed as prayed for.

Accordingly, Annexure A-1 is taken on record.

R.S.A No. 2479 of 2013

The present regular second appeal is directed against the judgment and decree dated 04.03.2013 passed by Addl. District Judge, Sonipat whereby the judgment and decree dated 07.04.2011 passed by Civil Judge (Jr. Divn.) Sonipat decreeing the suit of the plaintiffs-appellants (for short 'appellants') was set aside.

The appellants filed a suit for permanent and mandatory injunction whereby they had claimed that they had purchased a plot vide registered sale deed dated 23.01.2006 duly describing its boundaries and dimensions. The plot of the appellants is having dimensions 57 feet on

eastern side, 50 feet on western side, 65 feet on northern side and 59 feet on southern side. The total land measuring 368 sq yards within the revenue estate of Kalupur, West Ram Nagar near Maya Chand Diary within the municipals limits of Sonipat is owned by the appellants and from the date of purchase of the said plot, the appellants are in possession and the respondent is trying to encroach the plot of appellants by forcibly dispossessing them northern portion of the plot.

On notice, the respondent filed its written statement and on merits, the site plan relied upon by the appellants was stated to be wrong and denied. It was asserted that the respondent is owner in possession of plot measuring 400 sq yards, which was purchased by him, vide sale deed dated 14.03.2005 and according to which mutation No. 4669 was entered and sanctioned in favour of the respondent.

From the pleading of the parties, the trial Court framed the following issues on 19.04.2007:-

- “1. Whether the plaintiffs are entitled for decree of permanent injunction, as prayed for? OPP
2. If issue No. 1 is proved, whether the plaintiffs are entitled for a decree of mandatory injunction as prayed for? OPP
3. Whether the suit is not maintainable in the

present form? OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Whether the plaintiffs has not come to the Court with clean hands? OPD

6. Whether the plaintiffs has no cause of action to file the present suit? OPD

7. Relief.”

After going through the entire evidence led by the parties, the trial Court decreed the suit of the appellants and the respondent was restrained from encroaching upon the plot or portion of the suit property owned by the appellants as detailed in para No. 1 of the plaint. It was further ordered that if respondent has raised construction, he would be liable to get the same demolished at own costs and expenses.

On appeal, the lower Appellate Court reversed the finding of the trial Court and observed that the respondent had purchased the plot vide sale deed dated 14.03.2005 (Ex D1) prior to sale deed in favour of the appellants. His plot was bounded by a gali on northern side and gali on eastern side. The existence of plot with boundaries was not even disputed by the appellants. In site plan, even the appellants have shown plot of respondent along with plot of Smt. Seema Chauhan measuring 150 sq yards as duly noted in

the sale deed Ex D2. All the three sale deeds have been executed out of same khasra number. No partition has taken place. The appellants failed to show any defect in the title of appellant vide Ex D1. The assertions of the appellants that their plots starts immediately after southern boundary of plot of Seema Chauhan was rejected as gospel truth in absence of any material in this regard. Perusal of Ex P1 shows existence of plot on the northern side and this fact is admitted by the appellants vide Ex P2. There was no material on record to conclude that northern boundary of plot of appellants had started immediately after southern boundary of Seema Chauhan, rather the boundary has to be determined in reference to sale deed Ex D1 and D2, which are prior in time. The appellants were failed to show that the respondent had encroached upon plot owned by the appellants. The respondent is owner in possession of 250 sq yards land as per sale deed Ex D1 after deducting area of plot purchased by Seema Chauhan vide Ex D2 and not in excess of area mentioned in the sale deed Ex D1.

Thus the judgment and decree dated 04.03.2013 passed by Addl. District Judge, Sonipat calls for no interference, as the appellants have failed to lead any evidence that prior to the sale deed in their favour, the respondent was not in possession of 250 sq yards of land.

No substantial question of law arises for

adjudication by this Court.

Accordingly, regular second appeal is dismissed.

July 07, 2015
G Arora

(RITU BAHRI)
JUDGE