

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2823 of 2015 (O&M)

Date of Decision.03.12.2015

Kaushalya Devi (since deceased) through LRs and another

.....Appellants

Vs.

Arjan Singh and another

.....Respondents

Present: Mr. Vipul Dharmani, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The suit for injunction in relation to the property in *lal lakir* came to be decreed but reversed in the appeal on the inability of the plaintiffs to prove their possession. The contention of the plaintiffs were that they have married and gone to their respective husband's place but since the property was originally belonged to their father, at his death the property has come to the plaintiffs and they are in constructive possession of the same. The defendants denied the plaintiffs' right in the property and the inheritance. The suit was decreed originally and the appeal filed by the defendants was allowed on the finding that the plaintiffs who filed the suit for injunction alone have to prove possession and the case cannot fail on weakness in defence.

2. There had been previous proceedings between the parties.

It would appear that the defendant Arjan Singh claimed that he had

purchased the property from the plaintiffs' father Bhagwan Singh about 20 years ago. Earlier suit filed by the defendant had been withdrawn and the present suit for injunction came to be filed. There was surely material on record that the defendant had been pleading for rights over the property and he was trying to set up a case of purchase from the father which he failed to prove. If the plaintiffs would state that they have inherited the property and the defendant also making up a case of claim only from the father by virtue of purchase then it would have made possible for the plaintiffs to secure appropriate relief if only suit had been filed for recovery of possession admitting the defendant to be in possession of property. The lower Appellate Court was justified in saying that if the defendant did not file the sale deed and prove the document of purchase, it cannot automatically prove that the plaintiffs were in possession of the property. The decision is correct and it would not require any interference in the second appeal.

3. The second appeal is dismissed but the appellants will have liberty to file their own appropriate suit to claim possession of the property if they would source the title to the father and seek for right of property by inheritance. If such suit is filed, the dismissal of the suit in the Appellate Court and by this Court will not operate against the plaintiffs for seeking such a right.

(K. KANNAN)
JUDGE

December 03, 2015
Pankaj*