

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R.S.A. No.5304 of 2012 (O&M)

Date of decision: 16.02.2016

Bijender

...Appellant

Versus

Smt. Salochna and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 26.07.2012, passed by the Additional District Judge, Panipat, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 13.05.2011, passed by the Additional Civil Judge, Sr. Divn., Panipat, (for short, the 'trial Court'), has been dismissed.

The learned counsel states that the land, shown in red colour marked by letters ABCD in the site plan Ex.P5, was given

to the appellant by his grandfather, namely Sohan Lal, vide decree dated 15.01.1992 Ex.P2. The agreement to sell dated 05.12.1984 Ex.D2, vide which the grandfather of the appellant sold the suit land to the predecessor in interest of the respondents i.e.Krishan Lal, has neither been admitted by the appellants nor proved by the respondents in any way. Therefore, the judgments and decrees passed by the learned Courts below are liable to be set aside.

I have heard the learned counsel and carefully perused the entire record.

The learned Courts below have passed the judgments and decrees in favour of the respondents after appreciating the entire oral and documentary evidence placed on record by both the parties, which suggests that the respondents have proved their case in totality. From the perusal of the record, it reveals that vide judgment dated 16.03.2009, passed in civil suit bearing No.670 of 2008 titled as 'Krishan Lal Vs. Sewa Singh and others', filed by the predecessor in interest of respondent i.e.Krishan Lal, wherein the respondents claiming their possession on the basis of an agreement to sell Ex.D2 executed in their favour by Sohan Lal (grandfather of the appellant), the

appellant was restrained from interfering in the possession of the respondents except in due course of law. There is material contradiction in the statement of the appellant qua the construction of the shops over the suit land. Further, in his testimony, the appellant has stated that on 15.01.1992, the date on which the decree Ex.P2 was suffered by Sohan Lal (grandfather of the appellant) in his favour, the respondents were in possession of the land in dispute. Therefore, Ex.P2 did not pass any possessory right in favour of the appellant. The appellant has failed to lead any cogent evidence to prove that possession of the land in dispute was given by them to the respondents as tenant. The testimony of DW5-Sewa Ram, attesting witness of the agreement to sell Ex.D2 duly proved the execution of the said agreement, for which sale consideration is established by Ex.D3, Hindi translation of the receipt. Moreover, the factum of possession of the respondents over the land in dispute is also supported by the order Ex.D4 of A.C. IInd Grade, Matlauda on the correction of Girdawari, wherein it has been stated that the respondents are entitled to be recorded in possession as “Nammakbuja Gair Marusi Bevajah Lene Bai.”

The permissible possession of the respondents over the land in

dispute is duly proved by the agreement to sell Ex.D2 and not as a tenant of the appellant. The appellant himself admitted the possession of the respondents over the suit land. Therefore, this Court finds no fault in the findings recorded by the learned Courts below.

On consideration, this Court finds that the contentions raised by the learned counsel for the appellant have no merit. No evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

16.02.2016

ashok

(JITENDRA CHAUHAN)
JUDGE