

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

RSA 4084/2013

Date of decision:25.10.2017

Dayawanti

.....Appellant

VS

Ram Prasad and others

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr. Shubham Kaushik, Advocate for
Mr.Vinod S.Bhardwaj, Advocate for the appellant.

Mr.Akshay Kumar Goel, Advocate for respondents

Jaswant Singh,J(Oral)

Plaintiff no.1/appellant-Dayawanti in this second appeal has laid challenge to the concurrent findings recorded by the Courts below whereby her suit for declaration and permanent injunction was dismissed by learned Additional Civil Judge (SD)Loharu vide judgment and decree dated 15.11.2010 and findings affirmed in appeal by learned Additional District Judge,Bhiwani vide judgment and decree dated 6.3.2013.

In brief, plaintiff filed suit for declaration and permanent injunction alleging therein that she alongwith other plaintiffs (arrayed as proforma respondents 8 to 10 in the present appeal) were owners in possession of a residential house,detailed in the head note of the plaint, and as recorded in the assessment register for the year 1999-2000 of Municipal Committee, Loharu and that defendants had no right, title or concern with the said suit property and the alleged sale deed dated 9.10.1978 allegedly executed by deceased Munshi Ram, father-in-law of Dayawanti-

plaintiff/appellant in favour of his brother Ram Sarup was wrong, illegal, against law and facts. Consequential relief of permanent injunction restraining the defendants from alienating any part of the suit property-residential house was also sought.

Upon notice, defendants 1 to 5 filed written statements stating therein that originally Munshi Ram-father in law of plaintiff-Dayawanti was owner in possession of a plot measuring 444 square yards and out of that he sold his half share i.e. 222 square yards vide sale deed dated 9.10.1978 to his real brother Ram Sarup. It was further alleged that after the death of Ram Sarup his legal heirs wanted to sell their plot i.e. half portion of suit property to defendants 6 and 7 namely Hoshier Devi and Santro Devi.

In the written statement filed on behalf of respondents 6 and 7 it was alleged that predecessor of plaintiffs namely Munshi Ram was owner in possession of half portion of the house in dispute i.e. 222 square yards, who had sold the same to Ram Sarup vide sale deed dated 9.10.1978 and possession delivered on the spot. Since said Ram Sarup used to reside outside Loharu, so he sold the same vide sale deed dated 1.8.2008 to Mange Ram, GPA of defendants 6 and 7 and since then they (defendants 6 and 7) are owners in possession of the half portion of the house in dispute and that plaintiffs had no right or concern with the same.

On the pleadings of the parties issues were framed. Both sides led evidence in support of their respective pleas.

Heard learned counsel for the parties.

The courts below, on the basis of oral as well as documentary evidence has found that PW-2 Ram Kishan in his cross examination admitted that as on date on the spot, in the referred suit property, the possession was

that of defendants 6 and 7 and that these defendants used the suit property by constructing a room alongwith tin shed where they tied their animals. Thus, it was noticed that version of the defendants was corroborated by none else than plaintiff Ram Kishan PW-2 who admitted possession of defendants 6 and 7 over the suit property. As regards the plea of the plaintiffs that as per assessment register for the year 1999-2000 of Municipal Committee, Loharu they were owners in possession, it has rightly been held by the courts below that the said entry does not confer any title in favour of any of the parties. Further, plaintiff/appellant Dayawanti in her cross examination admitted that she was working in PGIMS Rohtak and she alongwith her son were residing at Rohtak whereas plaintiffs 3 and 4 (married daughters of deceased Munshi Ram) had shown their address of Loharu in the plaint but PW-3 Om Parkash admitted in his cross examination that both these plaintiffs were married and were residing with their in-laws. He also corroborated the factum of plaintiff no.1-Dayawanti working in PGIMS Rohtak and staying there. Thus, it has rightly been held that none of the plaintiffs were physically residing in Loharu but are still owners of half share of the property in dispute while the remaining half share towards western side was purchased by Ram Sarup from his brother Munshi Ram. Further respondents 6 and 7 namely Hoshier Devi and Santro Devi through their general power of attorney Mange Ram had purchased the half share of the property in dispute and were in possession of the property in question where they used to tether their cattle. It has further been noticed that plaintiffs have failed to prove that the sale deed dated 9.10.1978 executed by Munshi Ram in favour of his brother Ram Sarup was based upon fraud and mis-representation.

In view of the above, I find that no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

25.10.2017
joshi

(Jaswant Singh)
Judge