

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

347

RSA No.788 of 1989 (O&M)

Date of decision: 19.01.2018

Dulari and another

..... Appellants

Versus

Nihal Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Surinder Singh, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiffs had filed a suit for declaration and permanent injunction claiming that they are owners in possession of residential plot bearing Ahata No.100, Ghar No.119 situated within the abadi deh of village Likhi, Tehsil Palwal, District Faridabad. Plaintiffs further prayed that in case the defendants succeed in taking over the possession, the possession of the property be given to them.

Defendants contested the suit and pleaded that the suit property is not part of Ahata No.100, Ghar No.119. The defendants pleaded that originally the property was owned and possessed by Smt. Hatheri who during her life time executed a Will in favour of Kishan and Phuli. Kishan and Phuli on the basis of Will became owner and later on sold the property to the defendants vide sale deed dated 27.08.1982.

Both the Courts after appreciating the evidence available on the file decreed the suit and dismissed the suit filed by the defendants-appellants.

I have heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below and the records.

Learned counsel for the appellants has submitted that the possession of the defendants-appellants is proved from the report of the Local Commissioner and the admission of one of the plaintiff-Asharfi in the evidence. He has further submitted that in absence of any relief of possession, the suit was not maintainable.

While noticing facts, this Court has already noticed that the plaintiffs made a prayer that if the defendants take over possession, the possession be delivered to them. Thus, the relief of possession was prayed for by the the plaintiffs.

The plaintiffs have produced on file documentary evidence namely copy of Shijra Nasan, copy of Khasra Paimaish Abadi, copy of Shijra Paimaish Abadi and report of the Local Commissioner to prove their entitlement. On the other hand, the defendants only relied upon the alleged Will executed by Hatheri in favour of Kishan and Phuli. No evidence was produced to prove that Hatheri was ever owner of the property.

It is the case of the defendants in the written statement that the property in dispute is not part of Ahata No.100, Ghar No.119. The Local Commissioner after demarcating the area has found that the property in dispute is part of Ahata No.100, Ghar No.119. A reading of the judgments passed by the Courts below does not show that any objections were filed

against the report of the Local Commissioner.

In view of what has been discussed above, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

19.01.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No