

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

RSA No.24 of 1991 (O&M)
Date of decision : 10.10.2018

Mahabir and others

...Appellants

Versus

Mangat and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B. Goel, Advocate for the appellants.

Ms. Monika Arora, Advocate for
Mr. Pritam Saini, Advocate for respondent Nos.2 to 4.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants have a limited grievance.

Learned counsel for the appellants submits that the Courts below even after declaring that the plaintiffs are owners in possession of northern portion of the plot in question (Bara No.659) have still dismissed the suit. He submits that the dismissal of the suit would result in a decree which may harm the interest of the plaintiffs.

Learned counsel for the respondents does not have any serious objection to the submission made by the learned counsel for the appellants.

It is undisputed that the plaintiffs and defendant Nos.2 to 4 had purchased separate portions in the plot in question through two different registered sale deeds of the same date i.e. 28.02.1980. Defendant Nos.2 to 4

purchased southern portion which was constructed whereas the plaintiffs purchased the northern portion. Once the Appellate Court has found that the plaintiffs are in possession as owners pursuant to the aforesaid sale deed of the northern portion of the property, the Court erred in dismissing the suit. The concluding portion of the judgment passed by the First Appellate Court is extracted as under:-

“11. Consequently the judgment and decree passed by the lower Court is hereby set aside and the appeal is accepted and the suit of the plaintiff is dismissed with the observation that the plaintiffs are entitled to retain their possession only on the northern side of bara No.659 fully detailed in sale deed Ex.P1 vide which the plaintiffs purchased the northern side of the bara situated in village Hathwala, However, they will have no connection with the southern portion of bara No.659 which was purchased by the defendant vide sale deed Ex.P2. The parties are left to bear their own costs. Decree sheet be prepared accordingly and file be consigned to the record room.”

In view of the aforesaid limited submission, judgment and decree passed by the First Appellate Court is modified. There shall be declaration that the plaintiffs are owner in possession of northern portion of bara No.659.

In view of the above, the present Regular Second Appeal is disposed of.

10.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**