

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

RSA No.3970 of 2016 (O&M)

Date of decision : 30.10.2018

Mubarik Hussain and others

...Appellants

Versus

Usman Khan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

In this case, arguments were heard and the judgment was pronounced on October 29, 2018. This Court now proceed to record the reasons.

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing their suit for declaration as well as for grant of decree for permanent injunction.

The plaintiffs through the present suit have challenged the sale deeds executed on 24.11.1999 and 12.05.2000 by their father in favour of defendant No.2, a third party. It is claimed that the aforesaid sale deeds are without legal necessity and are in contravention of the agriculture custom governing the parties.

Defendant No.1, father of the plaintiffs did not appear but defendant No.2 appeared and contested the suit claiming that he has purchased the property for valuable consideration and existence of agriculture custom debarring the sale of the property, has been denied.

Both the Courts on appreciation of the evidence have found that the plaintiffs have admitted that they were not having good terms with their father. The Courts have noticed that the suit filed by the plaintiffs is barred by time as the sale deeds have been challenged after a period of more than 3 years.

Learned counsel for the appellants has been heard at length.

Learned counsel for the appellant submitted that the property is ancestral in nature. First of all in the Muhammadan law, there is no concept of ancestral property. Still further, it has come in evidence Ex.P17 that Usman Khan, defendant No.1 became owner of the property through a Civil Court decree dated 09.12.1989. Further, the plaintiffs have failed to prove any agriculture custom prevalent amongst meos of Ferozepur Jhirka debarring the owner from alienating the property.

Still further, the plaintiffs have only filed a suit for declaration and permanent injunction. The First Appellate Court has rightly held that since the plaintiffs are not in possession, therefore, without seeking further relief of possession, the suit is not maintainable in view of proviso to Section 34 of the Specific Relief Act, 1963.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

30.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No