

In the High Court of Punjab and Haryana at Chandigarh

RSA-5430 of 2015

Date of Decision: 23.2.2018

Smt. Nirmala Devi

---Appellant

versus

Subhash and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.J.S.Saneta, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against the consistent findings recorded by the Courts below whereby suit for possession with consequential relief of permanent injunction filed by the appellant/plaintiff was dismissed by the trial court vide judgment and decree dated 19.1.2012 and appeal preferred by the appellant against the judgment and decree passed by the trial court did not find favour with the Additional District Judge, Karnal.

The appellant/plaintiff staked her claim for possession of suit property by averring that she is owner of *bara* measuring 5 marlas comprised in khewat No. 127, khatauni No. 166, khasa No. 182(0-5) as per jamabandi for the year 2002-03 and a part of the said *bara* shown as 'ABCD' in red colour in the site plan has been encroached upon by the respondent/defendant No. 1. She also prayed for grant of permanent

injunction against the respondents from interfering in peaceful enjoyment of gali No. 180 with the plea that the respondents are adamant to lay bricks in the gali with an intention that plaintiff cannot succeed in digging septic pit.

The trial court, in para 20 of the judgment by relying upon judgment of Hon'ble the Supreme Court **Anathula Sudhakar vs. P.Buchi Reddy (Dead) by Lrs and others 2008(2) Apex Court Judgment 660** referred to in para 19 has held that the plaintiffs have filed a suit for declaration on the basis of document Ex. P-5 and subsequent family settlement. She has only filed suit for possession that she is owner in possession of suit property vide jamabandi for the year 2002-03 (Ex. P-2). Perusal of Ex. P-2 shows that in the year 2002-03, Baru Ram has been shown as owner of the said *bara* so the plaintiff has not been able to prove that she is owner in possession of the *bara* in question. Further held that Ex. P5 is not proved as per law as the same is not registered though a document whereby property worth more than Rs. 100/- is transferred requires registration. As has been noticed hereinbefore, findings recorded by the trial court were affirmed in appeal.

Counsel for the appellant has failed to advance any arguments much less meaningful to challenge consistent findings recorded by the courts below that document Ex. P5 is not sufficient to bestow ownership qua the *bara* in question, in favour of the plaintiff, therefore, she cannot pray for decree of possession by claiming herself to be owner of the suit property by relying upon the said document. Similarly, he has failed to successfully challenge correctness of the findings with regard to grant of injunction as the appellant cannot be allowed to dig a septic tank in the gali

that is meant for user by the public at large and vests in the gram panchayat.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

23.2.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No