

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

RSA No.2497 OF 2017 (O&M)

Date of Order:16.10.2018

Bachhu Singh and another

..Appellants

Versus

Kishan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S.Tewatia, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Plaintiffs filed a suit for declaration and permanent injunction with the assertion that their grand mother Smt. Budho widow of Sh. Teja was owner in possession of a plot, which in a family settlement came to the share of the plaintiffs and the aforesaid family settlement was acknowledged in civil court decree dated 26.08.1989 which was registered on 08.08.1997. Plaintiffs have challenged the sale deed executed by Defendants no.1 and 2 in favour of defendant no.3 dated 20.05.2014. \

Defendants appeared and contested the suit. It was pleaded that Smt. Budho was only owner of plot measuring 24 feet x 36 feet and remaining plot was owned and possessed by defendants no.1 and 2 who have sold the property in favour of defendant no.3.

Both the courts on appreciation of evidence have found that the plaintiffs have failed to prove their case. The courts have further found that the plaintiffs are not certainly sure as to how much property was owned by Smt. Budho. Learned trial court on appreciation of evidence have recorded

as under:-

“10. The plaintiffs in their plaint has nowhere explained that they are owner of how much area. Plaintiffs have also nowhere explained how much of their area has been sold out by the defendants no.1 and 2 to defendant no.3. The plaintiffs, Bacchu himself appeared in witness box as PW5 and has stated in his cross-examination that dispute land is approximately 65-/700 sq. yards. Thus, it is clear that the plaintiff himself is not aware about the total area of which he is owner. Due to aforesaid fact this court is unable to appreciate that how much area belonging to the plaintiff has been sold out by the defendants no.1 and 2 to defendant no.3. Therefore, on the basis of aforesaid vague plea of the plaintiffs, the aforesaid sale deed cannot be set aside.

11. It is an admitted fact that the suit property is situated within the abadi Deh of village Jainpur, Tehsil Hathin, District Palwal. The plaintiffs claim that some part of their property have been sold out by the defendants no.1 and 2 to defendant no.3. In this situation, it was the bounden duty of the plaintiffs to disclose that they are owner of how much area and they were also duty bound to get demarcated the suit property to reach on the conclusion that how much area belonging to the plaintiffs has been sold out by defendants no. 1 and 2 to defendant no.3. But as the same has not been done by

the plaintiffs, therefore, they are not entitled to any relief from this court. In view of above discussed, facts and circumstances, this court is of the considered opinion that the plaintiffs are not entitled to decree of declaration.”

Learned counsel for the appellants, although, made sincere attempt but in the absence of any evidence to show and prove as to how much property was owned by Budho which in turn was transferred through family settlement in favour of the plaintiffs, the plaintiffs cannot succeed. This is what has been held by the courts below.

Learned counsel for the appellants while referring to the statement of Ram Chand DW3 has stated that Ram Chand had admitted that defendant no.3 is not in possession. If one carefully reads statement in the very next line, Ram Chand had stated that it is Kishan and Bishan, who are in possession. Kishan and Bishan are vendors of defendant no.3. Kishan and Bishan have never challenged the sale deed executed by them in favour of defendant no.3 Smt. Murti. Still further, defendant no.3 has not admitted that plaintiffs are in possession of the property.

In such circumstances, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

October 16, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No