

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

**RSA No.3895 of 2017 (O&M)
Decided on : 04.04.2018**

Sharda (since deceased) through her legal heirs

...Appellants

Versus

Usha Minhas

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Ankit Chowdhri, Advocate
for the appellants.

G.S. Sandhawal, J. (Oral)

CM-4732-C-2018

Application under Section 151 CPC has been filed for preponing the hearing in the present appeal from 25.05.2018 on the ground that there is an urgency in the matter.

Accordingly, in view of the averments made in the application, duly supported by affidavit, the same is allowed. The hearing is postponed from 25.10.2018 to today itself and main case is taken on board.

CM stands disposed of.

RSA No.3895 of 2017 (O&M)

The defendants are in appeal aggrieved against the concurrent findings of the Courts below, whereby the suit for permanent injunction and mandatory injunction regarding the plot measuring 80 square yards has been decreed regarding Khewat Khata No.2/2 Khasra No.389 (3-16), 390 (3-11) situated in the revenue estate of village Baltana, Tehsil Dera Bassi, District Patiala.

The case of the respondent-plaintiff was that vide registered

sale deed 03.12.1996 she had purchased 346 square yards of land, which was given as Plot No.17 and 18 by Satpal. The defendants had sought to encroach upon the property in question. Resultantly, the suit was filed. The predecessor-in-interest of the appellants denied the purchase as such and took the plea that it was owned by her and she had constructed one room and boundary wall around it and there was raw material lying in the form of cement, sand and bricks etc. The following issues were framed by the trial Court:-

“1. Whether plaintiff is entitled for permanent injunction as prayed for? OPP

1-A. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable? OPD

3. Relief.”

The plaintiff examined herself and brought on record the sale deed dated 03.12.1996 (Ex.P2) alongwith the revenue record (Ex.P3) and proved the site plan. The defendant was never produced any evidence, which was closed by order. In appeal the matter was remanded with directions to afford opportunities to the defendant to produce evidence. Thereafter, the defendants chose not to appear in the witness box and only relied upon revenue record. Resultantly, the trial Court has taken into account the registered sale deed dated 03.12.1996 in favour of the plaintiff-respondent to hold on that she had proved her ownership and possession over the property and she had also proved identity of the property by proving a site plan. The defence that the appellant had become co-owner in the joint property was repelled as nobody appeared

on behalf of the defendant to rebut the evidence nor she had examined any witness.

As noticed an opportunity has been given by the Lower Appellate Court on earlier account and the matter had been remanded to the Trial Court and, thereafter, the appellants chosen not to appear before the Trial Court. In such circumstances, the suit had been decreed on 17.07.2012.

The Lower Appellate Court after examining the record noticed the said facts and kept in mind that though the revenue record showed that the deceased-appellant was the co-sharer, but on account of non-appearance, she had failed to show that which specific portion of land was in her possession. On the other hand the plaintiff has proved her ownership by proving on record sale deed Ex.P2 and jamabandi Ex.P3 showing her to be owner in possession of 138 shares in Khasra No.389 and 390. The dimensions had been proved by PW-1 Sachida Nand -Draftsman as per the site plan Ex.P1. The plaintiff had stood upto the cross-examination in support of her case, whereas the defendant had failed to appear in support of her case. Merely, placing reliance upon the revenue record would not take the appellants to an logical end, in the absence of having failed to prove their case in a proper manner, as even the sale deed in favour of the defendant had never been proved.

In such circumstances, no case is made out for interference in the concurrent findings of the Courts below. Resultantly, the appeal which is also barred by limitation by 561 days is dismissed on that

account also. The Lower Appellate Court decided the case on 07.10.2015 and certified copy was only applied on 24.04.2017 and, therefore, no sufficient cause is also made out to condone the delay, as no medical record has been appended in support of the same. The conduct of the appellants is only to harass the plaintiff and to deny the fruit of the registered sale deed and to continue with the illegal possession by prolonging the litigation on one account or another.

Accordingly, no ground is made out to interfere in the concurrent findings of the Courts below. Resultantly, the present regular second appeal is dismissed in limine.

APRIL 04, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No