

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

**RSA No.5211 of 2017 (O&M)
Date of decision: 15.02.2018**

Smt. Roshni Devi and others

.....Appellants

Versus

Sh. Ishwar Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shalender Mohan, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.13988-C of 2017

In view of the averments mentioned in the application, same is allowed and delay of 1517 days in re-filing of the appeal is condoned.

RSA No.5211 of 2017

This appeal has been directed against the judgment of dated 20.05.2013 passed by the District Judge, Rohtak, dismissing the appeal filed by plaintiffs-appellants against the judgment & decree dated 02.12.2011 passed by the Additional Civil Judge (Senior Division), Meham, whereby suit filed by them (plaintiffs) for declaration with consequential relief of possession, has been dismissed.

Plaintiffs-appellants filed the aforesaid suit for declaration to the effect that sale deed No.2486 dated 29.11.2007 executed by defendant-

respondent No.1 in favour of defendant No.2 was illegal, null & void. It was

stated that Ram Kishan (since deceased) father of plaintiffs and defendant No.1 was owner of a plot measuring 137 Sq. yards, bearing No.334 A.B. Situated at village Meham. The said plot was purchased by Ram Kishan from one Devat Ram on 25.02.1967 vide sale deed No.3681. Sat Narayan son of Ram Kishan died on 07.07.1991 issueless and his widow got remarried. Ram Kishan died intestate on 12.01.2004. It was pleaded that defendant No.1, with malafide intention, by claiming himself as sole owner of the property in dispute on the basis of assessment record for the year 1999-2000, sold the suit property to defendant No.2 by dint of impugned sale deed No.2486 dated 29.11.2007. Possession was also handed over to defendant No.2. As per plaintiffs, defendant No.1 was not sole owner of the property in dispute. Rather, he was having limited interest in the same. The property was never got partitioned.

Upon notice, initially, defendant Nos.1 and 2 appeared before the trial Court, but subsequently, they were proceeded against exparte. However, defendant No.3 filed the written statement by taking preliminary objections with regard to maintainability of the suit, cause of action, locus standi etc. On merits, it was submitted that husband of defendant No.3 was son of late Ram Kishan. Therefore, she being the legal heir of Ram Kishan, also had right, title and interest in the property in dispute left behind by the said Ram Kishan. It was further submitted that defendant No.1 had illegally sold the suit property in favour of defendant No.2.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the sale deed dated 29.11.2007 is liable to be set aside as alleged? OPP

2. If, the above issue is proved in affirmative, whether the plaintiffs are entitled for relief of permanent injunction restraining the defendant No.2 from altering, modifying, destroying or alienating the disputed property of the plaintiffs as alleged? OPP

3. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts have given concurrent finding of fact that plaintiffs were daughters of Ram Kishan. They have failed to identify the suit property as the same property, which they alleged was purchased by their father vide sale deed Ex.PW1/C. No attesting witness of the sale deed was examined, who could have deposed about the dimensions of the properties or about its surroundings. No site plan was prepared and produced on record by the plaintiffs. They have failed to lead any evidence that the property sold by defendant No.1 in favour of defendant No.2 was the same property, which had been purchased by their father Ram Kishan vide sale deed Ex.PW1/C.

After going through the impugned judgments, this Court is of the view that plaintiffs-appellants have failed to lead any cogent and convincing evidence to prove their case. Accordingly, their suit has rightly been dismissed by the Courts below. No illegality, much less perversity, has been found in the findings given by the Courts below, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, finding no merits, the present appeal is dismissed.

15.02.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No