

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

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RSA No.544 of 2017 (O & M)
Date of Decision:07.03.2018

Ankush Sood and others

...Appellants

Versus

Narotam Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Avinsh Mittal, Advocate
for the appellants.

ANIL KSHETARPAL, J.(Oral)

Defendant Nos.1 to 3-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs filed a suit for declaration claiming that the plaintiffs and defendants No.3 to 6 are owners in possession of the suit property to the extent of 1/7th share each, whereas defendants No.7 to 9 are owners in possession of remaining 1/7th share. It was the case of the plaintiffs that Chiranji Lal Sood, their father was owner of the property and since he died interstate, therefore, all Class I heirs would be entitled to the share in the property equally. Defendant Nos.1 to 3 contested the suit and pleaded that in fact, Vijay Kumar-defendant No.3 had purchased this property and thereafter raised a construction and this property was never owned by Chiranji Lal Sood. It was pleaded that defendant No.3 had purchased the property for a sum of Rs.350/- and has constructed the shop by spending Rs.15,000/-. No sale deed was produced by defendant No.3. No evidence was led by defendant No.3 that he had spent some amount on the

construction. Defendants No.1 and 2 are sons of defendant No.3 and claim to be bona fide purchasers on the basis of sale deed executed by defendant No.3 i.e. father in favour of defendant Nos.1 and 2.

On appreciation of evidence, learned trial Court decreed the suit filed by the plaintiffs. Learned First Appellate Court after re-appreciating the evidence available on the file, affirmed the judgment and decree passed by the learned trial Court and dismissed the appeal.

I have heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellants has submitted that the plaintiffs have to stand their own legs and the plaintiffs were required to prove that Chiranji Lal, their predecessor-in-interest was ever owner of the property.

This Court has considered the argument. It is defendant No.3, who took a specific stand that he had purchased the property for Rs.350/-. When he appeared in the witness-box, he had submitted that he had purchased the property by a registered sale deed but the same has not been produced.

In view of the aforesaid stand, it was incumbent upon defendant No.3 to prove by leading a cogent and convincing evidence that he had ever purchased the property. If the sale deed was registered, and the original was not traceable some record from the Office of Sub Registrar was required to be produced to establish that fact. The only defence, which was taken by defendant No.3 stood falsified. The obvious inference which has

by Chiranji Lal Sood, the predecessor-in-interest of the parties.

Next argument of learned counsel is that the plaintiffs have to stand upon their own legs. No doubt, the plaintiffs have to stand upon their own legs, however, they have examined two witnesses, who have deposed that the property was owned by Chiranji Lal Sood. The Courts on appreciation of evidence have believed the oral evidence.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by the Courts below.

Regular second appeal is dismissed.

07.03.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No