

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

RSA No.5692 of 2017 (O&M)

Date of decision : 27.07.2018

Balwinder Singh and others

...Appellants

Versus

Harjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jhanji, Advocate for the appellants.

Mr. Salil Sagar, Sr. Advocate with
Mr. Sankalp Sagar, Advocate and
Mr. Sunil Kumar, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Arguments have been heard in detail and the photocopy of the record, correctness whereof is not being disputed, has been examined.

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed by the plaintiffs for permanent injunction restraining the defendants from taking possession or demolishing the boundary wall. The plaintiffs filed the suit claiming that they had purchased the property through three different registered sale deeds in 1996 and had constructed the boundary wall and planted Eucalyptus trees and the defendants are claiming that they have purchased the property from Sher-E-Punjab House Building Cooperative Society Ltd. It was further pleaded that

the society had also filed a suit for permanent injunction, which was dismissed on 21.12.2007.

The defendants while filing the written statement pleaded that they have purchased plot Nos.253, 254, 235 and 236 from Sher-E-Punjab House Building Cooperative Society Ltd. and the mutation has been sanctioned and the plaintiffs have no right, title or interest in the property.

On examination of the evidence, learned trial Court found that the plaintiffs had executed the General Power of Attorney in favour of Office Bearers of the Cooperative House Building Society and pursuant thereto, the sale deeds were executed by the Society. The Court further found that the Cooperative Society has in fact carved out the plots and developed a housing colony. The Court also found that the plaintiffs cancelled the General Power of Attorney executed in favour of Office Bearers of the Society in the year 2006, whereas sale deeds were executed in favour of the defendants in the year 1996.

Learned counsel for the appellants while heavily relying upon the judgment passed on 21.12.2007, in a suit filed by the Society for permanent injunction has contended that the Society has failed to prove any right, title or interest on the basis of the General Power of Attorney or the agreement to sell. It may be noticed that the aforesaid suit is only for permanent injunction with respect to plot No.258A. Still further, there was no issue framed by the Court with regard to the validity or genuineness of the General Power of Attorney or the agreement to sell. Any incidental observation made by the Court cannot operate as res judicata against the defendants. Still further, the Courts have found that once the plaintiffs

themselves had authorized the Office Bearers of the Society to carve out the plots and the General Power of Attorney was given to sell the property as plots being part of the colony, therefore, the plaintiffs are not entitled to any injunction. It is not in dispute that the plaintiffs while filing the suit did not disclose these facts.

In such circumstances, the Courts below have correctly appreciated the evidence and recorded a finding which do not require any interference in exercise of the jurisdiction of the second appeal.

In view of the above, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No