

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

RSA No.882 of 2018 (O&M)

Date of Decision: February 23, 2018

Mona Singh and another

...Appellants

Versus

Mukesh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Prashant Bansal, Advocate for
the appellants.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below, whereby, the suit of the appellants for declaration of their being owners in possession of the plot-cum-house i.e. H.No.868, Ward No.6, measuring 196.72 sq. yards, fully detailed in para 1 of the plaint, and for restraining the respondents/ defendants from interfering in their peaceful possession, was dismissed.

The case of the plaintiffs was that the said house had been purchased by their mother Raj Rani from Pishori Lal Sikka for a consideration of Rs.1,50,000/-. An amount of Rs.72,000/- had been paid and an agreement was executed between Pishori Lal and Raj Rani. The remaining amount had also been paid as agreed. During the life time of Pishori Lal, Raj Rani had been residing in the suit property as tenant. The plaintiffs claimed that their mother had executed a Gift Deed (Ex.P1) in their

favour. Hence, they were the owners of the suit property after her death.

The case of the defendants was that the suit property had been purchased by Pishori Lal Sikka at a public auction on 17.5.1961 for a sale consideration of Rs.15,500/-. On the death of Pishori Lal, the property was transferred in the name of his sons, namely; Chander Kumar, Anand Parkash and Harinder Mohan. They, in turn, sold the suit property to respondent No.5 Narender Singh for a sale consideration of Rs.1,86,500/-. The sale deed was registered in the office of Sub-Registrar, Rohtak on 19.1.2001 and since then respondent No.5 is owner in possession of the property. The property was also transferred in the name of respondent No.5 in the Assessment Register by the order of E.O. Dated 30.3.2001 . It was denied that the house had been purchased by Raj Rani from Pishori Lal Sikka.

In support of their claim, the plaintiffs had examined appellant No.1 Munna Devi as PW1, Baljit Singh Record Keeper as PW2, Ved Parkash Assistant Clerk MC Rohtak as PW3, Moti Ram Saini draftsman as PW4, besides tendering certain documents.

For the defendant, respondent No.1 Mukesh appeared as DW5 and respondent No.5 appeared as DW4. Ved Parkash appeared as DW1, Hukam as DW2, Pawan Kumar Record Keeper as DW3. Certain documents were also tendered in evidence.

The learned Trial Court held that the appellants had not been able to prove their ownership. They had not been able to prove any agreement to sell executed by Pishori Lal Sikka, original owner, in favour of Raj Rani, their mother. Further, it was held that in the absence of a sale-deed, a mere agreement to sell would not confer any title or interest in Raj Rani, mother

of the appellants. Consequently, she could not validly execute a gift deed in favour of the appellants and the said gift deed would not confer any right, title or interest on the appellants. On the other hand, the respondents had been able to prove that the suit property had been purchased by Pishori Lal Sikka at a public auction on 17.5.1961 and that after his death, the property in question had been transferred in the name of his sons, who in turn, had executed a sale deed in favour of respondent No.5. The learned Trial Court further held that the electric meter, installed in the suit property in the name of the mother of the appellants, her ration-card bearing the same address, the Assessment Register showing their mother in possession of the suit property, the electricity bills in her name till 25.2.2012 only indicated that their mother had been in possession of the suit property. The appellants, however, had not been able to show any document or proof about their possession over the suit property, except the gift-deed, which would not confer any right, title or interest in them over the suit property or indicate their possession over the property. As the defendants had been shown to be the owners of the property, no injunction could be granted against them. The learned Lower Appellate Court affirmed the findings of the learned Trial Court.

Learned counsel for the appellants contended that the father of the appellants Raj Kumar had filed civil suit No.89/1 of 7.10.1997 against Harinder Sikka and others seeking a decree of permanent injunction for restraining the defendants therein from forcibly dispossessing him from H.No.868/2, Partap Mohalla, Rohtak. The suit was decreed and the defendants therein were restrained from dispossessing the plaintiff therein

from the said house except in due course of law. Learned counsel contended that from this it was established that the plaintiffs are in possession of the house and hence they were entitled to a decree of injunction. This contention cannot be accepted.

The said suit had been decreed on 11.4.2003, whereas, the present suit was instituted on 11.2.2010. The appellant's father may have been a tenant, but there is nothing to indicate that the appellants had continued in the same capacity. The Courts below have held that it has not been established that the plaintiffs were in possession of the suit property. Hence, the courts rightly held that the plaintiffs were not entitled to a decree of permanent injunction against the true owners.

A concurrent finding of fact has been recorded by the Courts below. No fault can be found therewith. There is no question of law involved in the present appeal. Thus, the same is dismissed.

Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding the application for condonation of delay in filing the appeal.

February 23, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No