

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

**RSA No.1340 of 2019 (O&M)
Date of decision: 12.09.2019**

Budh Ram and another

.....Appellants

Versus

Ram Sarup and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Surajpreet Singh Kaang, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.3387-C of 2019

For the reasons mentioned in the application, same is allowed and delay of 68 days in filing of the appeal is condoned.

RSA No.1340 of 2019 (O&M)

This appeal has been filed against the judgment dated 02.05.2018 passed by the District Judge, Kaithal, dismissing an appeal filed by plaintiff-appellants (hereinafter referred to as 'the plaintiff') against the judgment and decree dated 09.02.2016 passed by the Civil Judge (Senior Division), Kaithal, whereby suit filed by them (plaintiffs) seeking relief of possession of the suit land, has been dismissed.

Budh Ram etc.-plaintiffs (appellants herein) filed the above said suit with the averments that Ramdia, Ram Kishan and Jai Kishan sons of Giasu Ram had purchased land measuring 1 Kanal 1 Marla, *Gair Mumkin* Plot (*bara*), comprised in Khewat No.454, Khatoni No.608, Rectangle No.254, situated within the revenue estate of Barot, Tehsil and District Kaithal, from its previous owner. Out of the total land measuring 1 Kanal 1

Marla, the property shown in red colour in the site plan came to the share of Ramdia (father of plaintiff No.1 and husband of plaintiff No.2). Ramdia died intestate and thereafter, the plaintiffs had inherited his estate. Revenue entries were still continuing in the names of proforma defendants, which were wrong and illegal. As per the plaintiffs, they were owners of the suit property. In the year 2011, defendants took forcible possession of the suit property in the absence of plaintiffs. Hence, the suit.

Upon notice, defendants filed written statement taking preliminary objections with regard to maintainability of the suit and suppression of true/material facts from the Court. It was submitted that Ramdia (father of plaintiff No.1 and husband of plaintiff No.2), representing himself to be owner of the suit property, had agreed to sell the suit property in favour of defendant No.1 for a total sale consideration of Rs.50,000/- vide agreement to sell dated 24.04.2000. The said agreement was executed in the presence of witnesses Darshan Singh and Karambir, Lamberdar of village Barot. After receiving the total sale consideration of Rs.50,000/- from defendant No.1, Ramdia affixed his thumb impression on the agreement to sell dated 24.04.2000 and delivered possession of the suit land to defendant Nos.1 to 4 on the same date. Since then, defendant Nos. 1 to 4 were in possession of the suit property. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

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

1. Whether plaintiffs are owners of the suit land? OPP
2. If issue No.1 is proved in affirmative, then whether plaintiffs are entitled to recover possession of the suit land from defendant Nos.1 to 4? OPP

3. Whether present suit is not maintainable in its present form?
OPD
4. Whether plaintiffs have concealed true and material facts from the Court, if so, its effect? OPD
5. Whether plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
6. 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. The case of the plaintiffs (appellants) is that the suit property had been purchased by Ramdia (father of plaintiff No.1 and husband of plaintiff No.2) from Ram Kishan and Jai Kishan. As per plaintiff, in their absence, defendants have taken possession of the suit illegally and forcibly. On the other hand, defendants had taken a plea that vide agreement to sell dated 24.04.2000, Ramdia had agreed to sell the suit property to defendant No.1 for a total sale consideration of Rs.50,000/-. Both the Courts below have given a concurrent finding of fact that defendants have duly proved the agreement to sell dated 24.04.2000 Ex.D1 by examining Rameshwar Dass (DW-1), Karambir (DW-2) and R.K. Kalra, Advocate (DW-5). As per document Ex.D2, consideration of Rs.50,000/- was paid to Ramdia and the same had been witnessed by Rameshwar Dass (DW-1) and Karambir (DW-2). It was clear that the agreement to sell dated 24.04.2000 was duly executed between Ramdia and defendant No.1 Ram Sarup. It was further observed that after giving entire sale consideration to Ramdia, possession of the property in dispute was delivered to the defendants and their possession over the said property was legal. With these observations, suit of the plaintiffs have been dismissed.

through the impugned judgments, this Court is of the view that plaintiffs have failed to lead any cogent and convincing evidence to prove their case. On the other hand, agreement to sell dated 24.04.2000 Ex.D1 and payment of sale consideration of Rs.50,000/- Ex.D2 have been duly proved on record by the defendants. In view of the said fact, suit filed by the plaintiffs (appellants) has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

12.09.2019
ajp

(RITU BAHRI)
JUDGE

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