

RSA-5917-2017 (O&M)

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

**RSA-5917-2017 (O&M)
Date of decision : 28.02.2020**

Ami Chand (deceased) through LR's and another

... Appellants

Versus

Harkesh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. G.C. Shahpuri, Advocate
for the appellants.

ALKA SARIN, J. (ORAL)

The present regular second appeal has been filed against the judgments and decrees passed by both the Courts below dated 21.11.2013 and 09.05.2017, non-suiting the plaintiffs-appellants.

2. In brief, the facts relevant to the present case, are that the plaintiffs-appellants filed a suit for permanent injunction restraining the defendant-respondents from interfering in the suit property. The case set up by the plaintiffs-appellants was that they were owners in possession of the suit property on the basis of agreement to sell dated 03.04.2004. It was further averred in the plaint that the plaintiffs-appellants were in possession of the suit property for the last more than 45 years.

3. In the written statement, the stand taken by the defendant-respondents was that the defendants and their family members were in possession of the suit property. Further they denied that there was any kind of agreement to sell qua the said property.

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4. On the basis of the pleadings, eight issues were framed by the Trial Court. Issue No.1 reads as under:-

“1) Whether the plaintiff is entitled for permanent injunction restraining the defendants from interfering in the possession of the plaintiff over the suit property by forcibly dispossessing the plaintiffs from the suit property and further restraining the defendants from encroaching upon the suit property and from alienating the suit property in any manner? OPP”

5. On the basis of the pleadings and the evidence led, the Trial Court returned a finding that there was no evidence except for the bald statement of the plaintiffs-appellants that they were owners in possession of the suit property. The agreement to sell dated 03.04.2004 was found to be merely an agreement and there was no evidence that the sale stood completed qua the said agreement. No sale deed or any other documents were produced on the record to establish the ownership of the plaintiffs-appellants. Further, the Trial Court found that the plaintiffs-appellants had also failed to prove their possession over the suit property.

6. Aggrieved by the said judgment and decree, the plaintiffs-appellants preferred an appeal before the lower Appellate Court, which met with the same fate.

7. I have heard learned counsel for the plaintiffs-appellants.

8. It has been contended that the plaintiffs-appellants were owners in possession of the suit property and hence, were entitled for grant of permanent injunction in their favour.

9. However, learned counsel for the plaintiffs-appellants is unable to point out any documentary evidence led by the plaintiffs-appellants in

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order to prove their possession over the suit property. In a suit simpliciter for permanent injunction, all the plaintiffs-appellants had to do was to establish their possession. There is no iota of evidence on record which shows that the plaintiffs-appellants were in possession of the suit property.

10. The reliance of learned counsel for the plaintiffs-appellants on the agreement to sell dated 03.04.2004 is wholly misplaced inasmuch as there was only an agreement to sell which has not culminated into a sale deed. That being so, I do not find any merit in the present appeal and hence, the same is dismissed.

28.02.2020
Yogesh Sharma

(ALKA SARIN)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No