

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3894 of 1987(O&M)
Date of decision: 03.08.2022

Kuldip Singh (since deceased) through LRs and others

..Appellants

Versus

Balwant Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naveen Bawa, Advocate and
Mr. Tanmoy Gupta, Advocate
for the appellants.

Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate
for respondent no. 1 to 3.

ANIL KSHETARPAL, J(Oral)

1. While assailing the concurrent findings of fact arrived at by the courts below, the defendants have come up in the Regular Second appeal.

2. The plaintiffs' suit for possession of 60 kanals of land has been decreed. The plaintiffs claim entitlement to possession on the basis of their ownership. The plaintiffs claim to have purchased 60 kanals of land vide sale deeds dated 07.02.1983 and 15.02.1983. It is the case of the plaintiffs that though they were delivered possession, however the defendants filed a suit for injunction in which an interim order was passed. After obtaining the interim order, the plaintiffs were dispossessed in the month of April, 1983.

3. Defendants no.1 to 3 contested the suit claiming that Sh. Gurcharan Singh and his brother Sh. Bhajan Singh filed a suit which was dismissed, therefore, the present suit is hit by the doctrine of resjudicata.

The defendants also claim that the sale deeds executed in favour of the

plaintiffs were mere paper transactions.

4. In substance, the defendants claimed entitlement to continue in possession to the extent of agreement to sell dated 16.04.1976 from Sh. Bhajan Singh. The defendants claimed that they paid Rs.19,000/- as the earnest money and the possession was delivered.

5. Both the courts, on appreciation of evidence, have found that the defendants failed to fulfill the ingredients of Section 53-A (Part Performance) of the Transfer of Property Act, 1882. Thus, the suit filed by the plaintiff was decreed.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record of the court below which was requisitioned.

7. The learned counsel representing the appellants while challenging the judgments and decrees passed by the courts below contends that the possession of the defendants is protected under Section 53-A of the Transfer of Property Act, 1882. He submits that the defendants were always ready and willing to perform their part of the contract.

8. Per contra, the learned counsel representing the plaintiffs submits that the defendants apart from alleging the agreement to sell, have not taken any step to show their readiness and willingness to perform their part of contract. He submits that the defendants have never filed any suit for specific performance of the agreement to sell.

9. One of the necessary ingredients of Section 53-A of the Transfer of Property Act, 1882, is existence of readiness and willingness on the part of the agreement holder and presence of some steps taken by him in furtherance thereof, which proves that they were prepared to honour their

part of the contract.

10. In the present case, the defendants have failed to substantiate their case as after 1976, they have not taken any step whatsoever to claim protection under Section 53-A of the Transfer of Property Act, 1882.

11. Hence, no ground to infere is made out.

12. Dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

August 03, 2022

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(ANIL KSHETARPAL)
JUDGE

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