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

RSA No.1782 of 2022 (O&M)

Date of decision: 20.09.2022

Satnam Kaur (since deceased) and others

..... Appellants

versus

Kamlesh Sharma and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. H. S. Dhindsa, Advocate
for the appellants.

Mr. T. P. S. makkar, Advocate
for the caveators.

TRIBHUVAN DAHIYA J.

This is the regular second appeal filed by the appellants-defendants (hereinafter referred to as 'the defendants') against the concurrent findings of fact recorded by the trial Court as well as the lower Appellate Court. The respondents-plaintiffs (hereinafter referred to as 'the plaintiffs') filed a suit for possession directing the defendants to put them in actual and vacant possession of her own self purchased property, house measuring 53 sq. yards as detailed in the plaint. Mandatory injunction directing the defendants to restore the possession of her household goods worth Rs.66,700/- as detailed in the plaint, was also sought.

2. The facts in brief as pleaded by the plaintiffs are, that they are absolute owners of the suit property, having purchased it for valuable consideration, vide sale deed dated 24.04.1998 registered on 27.04.1998

with the Sub Registrar, Ludhiana. Mutation in that regard stood entered and sanctioned in the plaintiff's name. At the time of execution of the sale deed, the plaintiffs were inducted in peaceful possession of the suit property by the vendors. However, in mid June, 2006, the plaintiff and her family members had gone to Gujarat, and in their absence, the defendants, by hatching a conspiracy with each other, broke open the locks of the suit property and entered in it. They also stole away the valuable household articles of the plaintiffs.

3. Upon notice, the defendants asserted that defendant No.4, Satnam Kaur, had purchased the property in question against the sale consideration of Rs.60,000/- from Ashok Kumar on the basis of an agreement of full and final payment on 17.06.1996, which is on record as Mark-A.

4. After framing of the issues, both the parties led evidence before the trial Court. On perusal of evidence, both the Courts have held that plaintiffs had proved that Kamlesh Sharma, their predecessor-in-interest, purchased the suit property vide sale deed dated 24.04.1998 (Exhibit P-2). The claim for suit property raised by the defendants on the basis of agreement to sell dated 17.06.1996, Mark-A, cannot be entertained since it is not a document of title. It was established on record that the plaintiffs were owner of the suit property and were held entitled to the possession of the same.

5. The only argument raised by learned counsel for the appellants is that the property in question is in a joint unpartitioned land, therefore, its specific possession by way of the instant suit cannot be claimed by the plaintiffs.

6. This argument has no merit, since it is not pleaded by the defendants that the property is a part of joint unpartitioned land. No issue to that effect was framed, nor any such argument was raised before the Courts below by the defendants. Therefore, the issue does not arise for consideration in the second appeal; besides, it is not maintainable in the absence of any pleadings and evidence to that effect.

7. The judgments and decrees of the lower Courts do not suffer from any infirmity, or error of law. No substantial question of law arises for consideration.

8. Dismissed.

9. Pending applications, if any, also stand dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

20.09.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No