

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

207

2023:PHHC:085097

RSA-1982-1989

Date of decision: 06.07.2023

RAM NARAIN (DECEASED) THROUGH LRS AND ANR.

..Appellants

Versus

RADHEY SHYAM AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S. Tewatia, Advocate
& Mr. Mahabir Singh Tanwar, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. Defendants No.1 and 2 in a suit for possession have filed this Regular Second Appeal in order to challenge the correctness of the judgment passed by the First Appellate Court. Though, detailed facts have been noticed by the Courts below, however, to complete the narration, important facts, in brief, are required to be noticed, which are as follows:-

The plaintiffs filed the suit for grant of decree of possession of the plot comprised in Khasra No.142 measuring 14 marlas. It was claimed by the plaintiffs that they along with defendant No.3 (Puran Singh) are the joint owners of the property. They claim decree of possession of the property. Defendants No.1 and 2 while contesting the suit, claimed that they have purchased the property from the predecessor in interest of the plaintiffs as well as defendant No.3 on payment of Rs.10,000/- through a writing dated 04.06.1981.

2. The trial Court culled out the following issues:-

“1) Whether the plaintiffs and defendant No.3 are owner of the disputed property as alleged? OPP

- 2) *Whether the plaintiffs are entitled for decree of possession of the disputed property as alleged? OPP*
- 3) *Whether the plaintiffs/applicants are estopped by their acts and conduct from filing the present suit? OPD*
- 4) *Whether the plaintiffs/applicants have got no locus-standi to file the present suit? OPD*
- 5) *Whether the plaintiffs have got no cause of action for the present suit against the answering defendants? OPD*
- 6) *Whether the suit has not been properly valued for the purpose of jurisdiction and adequate court fee? OPD*
- 7) *Relief.*

3. The trial Court held that the writing dated 04.06.1981 is not registered and hence does not result in the transfer of title. The trial Court held that the plaintiffs and defendant No.3 are the owners of the property, however, the suit was ordered to be dismissed. The plaintiffs filed a first appeal, which has been partly accepted. The Appellate Court held that the plaintiffs are entitled to half share of Khasra No.142 measuring 14 marlas. Thus, the judgment of the trial Court has been modified to the above extent.

4. This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paperbook.

5. The learned counsel representing the appellants contend that the First Appellate Court has erred in modifying the decree and the Court should not have given direction to the local commissioner to demarcate half share and deliver possession in execution proceeding.

6. This Court has considered the submissions.

7. It is not in dispute that both the Courts have held that there is no transfer of title in favour of the appellants. In the First Appellate Court, the appellants have sought protection of their possession under Section 53-A of the Transfer of Property Act, 1882. The First Appellate Court has accepted the plea of the appellants qua half share of the property because the writing is only qua half share. In such circumstances, the First Appellate Court has

granted decree only qua half share. Thus, the modification of the decree passed by the trial Court is based on sound reasons.

8. As regard the next argument, it may be noted that once a decree for possession of half share has been passed in favour of the plaintiffs, the possession thereof is required to be handed over in accordance with law.

9. In view of the aforesaid facts, no ground to interfere is made out.

10. Dismissed.

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

July 06th, 2023

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(ANIL KSHETARPAL)
JUDGE

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