

2023:PHHC:128377
**139 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1156-2023 (O&M)
Date of decision: 04.10.2023

Gurdev and others

....Appellants

Versus

Paramjit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. A.K.Walia, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

CM-4420-C-2023

1. For the reasons stated in the application, delay of 381 days in re-filing the appeal is condoned.

2. CM stands allowed.

CM-4421-C-2023

3. For the reasons stated in the application, delay of 17 days in filing the appeal is condoned.

4. CM stands allowed.

Main case

5. The correctness of the concurrent findings of fact arrived at by the courts below is assailed by the plaintiffs in this Regular Second Appeal. Their suit for grant of decree of permanent injunction restraining the defendant from dispossessing them has been dismissed by both the courts below. It is the case of the plaintiffs that Bhola Singh purchased plots measuring 130 sq. yards

and 160 square yards from the previous owners somewhere in 1900. Thereafter, Sh.Bhola Singh gifted his 1/3rd share to the plaintiffs' father Sh.Budh Ram orally. Thus, the entire suit of the plaintiffs is based on the alleged gift deed by Sh.Bhola Singh. In evidence, the plaintiffs failed to prove the document. Only a photocopy of the alleged gift deed was produced but plaintiffs failed to lead evidence to prove the same.

6. Learned counsel representing the appellants contends that for grant of decree of injunction the title is not required to be gone into and therefore, the suit should have been decreed.

7. This Court has considered the submissions made by the learned counsel representing the appellants. Once the plaintiffs come to the Court on the basis of a right, title or interest in the property, they are required to prove the same. In fact, this suit was not a simplicitor suit for grant of decree of permanent injunction. From the pleadings of the parties, the trial court framed the following issues:-

“1. Whether plaintiff is entitled to a decree for permanent injunction restraining the defendants from forcibly and illegally dispossessing the plaintiffs from their bara/ property marked by letters ABCD shown in red colour in the site plan attached situated within the abadi of village Nahauni, Tehsil Barara, Distt. Ambala? OPP.

2. Whether the present suit is not maintainable in the present form? OPD.

3. *Whether the plaintiffs have not come to the court with clean hands?OPD.*

4. *Whether the suit of the plaintiffs is hit by provisions of res judicata? OPD.*

5. *Relief.”*

8. It is evident that issue no.1 is comprehensive and based on the case of the plaintiffs. Once the plaintiffs have failed to prove their case, the courts have not committed any error in dismissing their suit. Hence, no ground to interfere is made out.

9. Dismissed.

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

04.10.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE