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

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RSA-867-2022 (O&M)

Reserved on : 02.03.2023

Date of Decision :14.03.2023

Ram Kumar and Others

...Appellants

Versus

Naveen Kumar and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parveen Kaushik, Advocate for the appellants.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellants against the concurrent findings of fact returned by both the Courts below vide the impugned judgment and decrees dated 12.03.2018 and 24.11.2021.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for declaration and permanent injunction averring therein that they were owners and in possession of Khewat No.36 Khasra No.588 measuring 11 Kanals 7 Marlas situated in the revenue estate of Jhajjar, Tehsil and District Jhajjar. It was averred that the father of the plaintiff-appellants had constructed a house and that since the house was old, it was demolished and five separate houses were constructed by the plaintiff-appellants and they have been residing therein for the last about 20 years. It was further the case that the plaintiff-appellants are owners to the extent of 50/227 share in the entire property. It was further alleged that defendant-respondents claimed that they have purchased the share of Narain Dass through an agreement and on the basis of the said agreement they wanted to interfere in the peaceful possession of the plaintiff-appellants. It was the stand taken that the agreement was unregistered

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and did not create any right, title or interest in favour of the defendant-respondents and that the defendant-respondents had no right to interfere in exclusive possession of the plaintiff-appellants on the basis of the sale deed, if any. Defendant Nos.1 and 2 filed their written statement raising pleas of maintainability, locus standi, cause of action and concealment of facts. On merits, it was averred that the plaintiff-appellants are owners to the extent of 50 shares out of total 227 shares i.e. that they were owners to the extent of 2 Kanals and 10 Marlas out of total land measuring 11 Kanals and 7 Marlas. It was further averred that Smt Minakshi wife of Navin Kumar (defendant-respondent No.1) is the owner of 234/5675 share i.e 9.36 Marlas/283 square yards vide registered sale deed No.7613 dated 25.03.2013 and the said property was purchased from Narain son of Parasram, Vasudev, Bahadur sons of Chhaju Ram and Smt. Saroj, Santosh daughters of Mansa Ram and Kishore Kumar son of Indrawati. It was further averred that plaintiff-appellants were heirs of Daya Chand who was the owner to the extent of 50/227 shares i.e. 2 Kanals 10 Marlas and that the plaintiff-appellants were in possession over the suit land exceeding their share. It was further averred that defendant-respondent No.1 had an agreement to sell qua the 14 Marlas which belonged to Mohar Singh out of which some property had been purchased in the name of the wife of defendant-respondent No.1. It was further averred that the activities of the defendant-respondents were restricted to his ownership and to the extent of his rights under agreement to sell dated 06.02.2013. Replication was not filed.

On the basis of the pleadings of the parties, the following issues were framed:-

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1. Whether the plaintiff is entitled to a decree for declaration on the grounds as alleged in the plaint ?
OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
4. Whether the plaintiff is stopped by his own act and conduct to file the present suit ? OPD
5. Whether the plaintiff has concealed the true and material facts from the Court ? OPD
6. Relief.

The Trial Court vide judgment and decree dated 12.03.2018 partly decreed the suit restraining the defendant-respondent Nos.1 and 2 from interfering in the peaceful possession of the plaintiff-appellants. The relief of declaration was not granted. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellants which was dismissed vide judgment and decree dated 24.11.2021. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellants would contend that the Courts below have erred in only partly decreeing the suit and that defendant-respondent No.3 has no right, title or interest in the suit property and a restraint order ought to have been passed against her also.

Heard.

In the present case both the Courts below have concurrently found that Ex.D/1 sale deed No.7613 dated 25.03.2013 was duly proved on the record.

It is also an admitted fact that the plaintiff-appellants are only owners to the

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extent of 50/227 share in the suit property. There is no evidence on the record to show that the sale deed Ex.D/1 in favour of defendant-respondent No.3 was not a validly executed document. It has also been concurrently found that the plaintiff-appellants failed to show their exclusive possession over the suit property. In the absence of any evidence to show their exclusive possession over the suit property and the fact that sale deed Ex.D/1 dated 25.03.2013 was validly executed, I do not find any ground to interfere in the concurrent findings of fact recorded by both the Courts below. The relief of declaration has rightly been denied to the plaintiff-appellants and further they have rightly been granted the relief of injunction only against defendant-respondent Nos.1 and 2.

In view of the above, I do not find any merit in the present regular second appeal. No question of law, much less any substantial question of law, arises for determination in the present appeal which is wholly devoid of any merit. The same is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

14.03.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO