

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

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**RSA No.153 of 2016(O&M).
Decided on:16.08.2023**

Sabrina Mahi and others**...Appellants****Versus****Seeta Mahi @ Simar Kaur and another****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Mr. Vishal Munjal, Advocate
for the appellants.**

ANIL KSHETARPAL, J.

1. The correctness of the concurrent findings of fact arrived at by both the courts below is challenged by the defendants in this regular second appeal.
2. The relevant facts, in brief, are required to be noticed in order to understand the controversy involved in this litigation.
3. Smt. Seeta Mahi @ Simar Kaur and her husband Sh. Mohan Singh Mahi filed a suit for decree of declaration to the effect that they are entitled to 2/3 share in the property. They also prayed for grant of decree of separate possession by way of partition. Their claim is based upon the fact that the plaintiffs along with late Nirmal Singh jointly purchased the properties no.379 and 380 vide sale deed dated 02.07.1987 and 23.06.1987.
4. The defendants while contesting the suit claimed that the property was exclusively owned by late Sh. Nirmal Singh, who purchased the property from his own funds. It was asserted that late Sh. Nirmal Singh

did not know the contents of the sale deed. The defendants while appearing in evidence admitted that the plaintiffs and late Sh. Nirmal Singh purchased the property jointly. Thus, both the courts decreed the suit as perusal of the sale deeds proved that both the properties were purchased by the plaintiffs along with late Sh. Nirmal Singh.

5. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paper book.

6. The learned counsel representing the appellants submits that a previous suit for grant of separate possession by way of partition was filed on 19.05.2001 which was dismissed for non-prosecution, on 19.07.2003. Hence, the subsequent suit is not maintainable. He submits that both the courts have erred in failing to appreciate the aforesaid objections of the defendants.

7. With the able assistance of the learned counsel representing the appellant, this court has examined the plaint of the previous suit which is Ex.D2 on the record of the trial Court. It is evident that the previous suit was filed with respect to property no.380 by Sh. Mohan Singh, Smt. Simro and Smt.Prabh Kaur. The plaint was not signed either by Sh. Mohan Singh or Smt. Simro wife of Sh. Mohan Singh.

8. A perusal of the order dated 19.07.2003, it is evident that the court found that the suit has not been properly instituted as Sh. Mohan Singh and Smt. Simro have neither signed the plaint nor the power of attorney. Thus, the suit was dismissed for want of prosecution.

9. The defendants have not produced any evidence to prove that the previous suit was filed by the plaintiffs because they did not sign the plaint as well as the power of attorney in favour of the advocate. The previous plaint was thumb marked by Smt. Prabh Kaur, who is not plaintiff in the present suit. Moreover, this suit is with respect to the properties no.379 and 380, whereas the previous suit was only restricted to property no.380.

10. Keeping in view the aforesaid facts, it will not be appropriate to dismiss the present suit as not maintainable. The learned counsel did not assail the findings of the courts below on any other ground.

11. Dismissed.

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

August 16, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO