

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

RSA-5604 of 2015(O&M)

Date of Order:17.10.2023

Smt. Kaushalya Devi and others**.Appellants****Versus****Subash Wadhera and others****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. P.S.Khurana, Advocate
for the appellants.****Mr. Sanjeev Manrai, Sr. Advocate, with
Ms. Neha, Advocate
for the respondents.****ANIL KSHETARPAL, J**

1. The correctness of the concurrent findings of fact arrived at by the courts below is questioned by the defendants in this second appeal.
2. The plaintiffs' suit for possession of the double storeyed shop along with mesne profits for use and occupation of the premises has been decreed by both the courts below.
3. The plaintiffs filed a suit on the basis of two different sale deeds, one executed by Sh. Parshotam Lal on 06.04.1940, whereas the other executed by Sh. Piyare Lal and Sh. Yash Pal, vide sale deed dated 18.09.1985.
4. The defendants while contesting the suit pleaded that after dismissal of the rent petition, the property has been reconstructed and it was an evacuee property which was allotted by the Central Government to them.
5. Both the courts on appreciation of evidence have found that the plaintiffs became owner of the property by virtue of sale deeds executed on

06.04.1940 ad 18.09.1985, and the defendants have failed to prove any conveyance deed in their favour. In fact, the allotment, if any, in favour of the defendants was cancelled on 26.07.1961, thus both the courts decreed the suit.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record which is available in the digital form.

7. The learned counsel representing the appellants contends that Sh. Piyare Lal and Sh. Yash Pal sold their share in favour of Sh. Tirath Singh vide sale deed dated 16.09.1985 and therefore, they were not left with any right, title or interest for selling the property on 18.09.1985. He further submits that although this issue has never been raised in the courts below, because it goes to the root of the matter he should be permitted to take up this plea.

8. This court has considered the submissions of the learned counsel representing the appellants.

9. The argument of the learned counsel representing the appellants sought to be raised for the first time in this second appeal is based on the question of fact which is required to be decided on appreciation of evidence.

10. As correctly admitted by the learned counsel representing the appellants, this aspect has never been pressed before the courts below. For the first time, in this regular second appeal, it would not be appropriate to permit the appellants to make out a wholly new case. Moreover, the appellants do not claim property through Sh. Tirath Singh.

11. On a Court question, the learned counsel representing the appellants admits that there is no conveyance deed executed by the Central

Government in favour of the appellants. In these circumstances, the suit for possession of the suit property on the basis of title has correctly been decreed by both the courts below.

12. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

13. Dismissed, accordingly.

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

October 17, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO