

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

105

2024:PHHC:013074

**RSA-1335-1992 (O&M)
Date of decision: 31.01.2024**

ANOKHI

..Appellant

Versus

AMAR SINGH & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goel, Advocate
for the appellant.

Mr. Ajay Jain, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the Courts below while dismissing her suit for grant of decree of possession. She filed a suit claiming to be an owner of the property. She also claimed that the defendants filed a previous suit claiming ownership by way of adverse possession, which was dismissed on 19.12.1980, which in appeal was affirmed by the judgment dated 04.01.985. The regular second appeal filed by the defendants was also dismissed.

2. The defendant while contesting the case submitted that in fact the plaintiff sold the land to them on 25.06.1963 by virtue of an agreement on payment of the entire sale consideration of Rs.537 and 8 anna.

3. Both the Courts on appreciation of evidence dismissed the suit after recording findings of fact that the defendants are entitled to protect their possession in part performance of the agreement to sell under Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as the

‘1882 Act’).

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

5. The learned counsel representing the appellant contends that the defendants are debarred from protecting their possession under Section 53A of the 1882 Act particularly when their previous suit claiming title on the basis of adverse possession has been dismissed. He submits that in the previous suit, the defendants, who were the plaintiffs in the previous suit, never claimed protection under Section 53A of the 1882 Act.

6. On the other hand, the learned counsel representing the respondents submits that in the previous suit, the plaintiffs claimed that the possession of the defendants is pursuant to the agreement to sell and therefore, they are not entitled to a decree of declaration that they have become owner by way of adverse possession. He submits that the aforesaid plea of the appellant was accepted and the previous suit filed by the defendants was partly dismissed though they were granted a decree of permanent injunction protecting their possession except in due course of law. He submits that once the plaintiff has claimed that the defendants possession was pursuant to the agreement to sell, which resulted in dismissal of their suit, the defendants are entitled to protect their possession under Section 53A of the 1882 Act. Despite the repeated requests to the learned counsel representing the appellant, he failed to draw the attention of the Court to any statutory provision, which debars the defendants from protecting their possession under Section 53A of the 1882 Act in the subsequent suit. In any case, in the previous suit, the Court refused to grant a decree of declaration with respect to their ownership to defendants (who were plaintiffs in the

previous suit) on the ground that if they possess the land by virtue of the agreement to sell then they are entitled to claim protection under Section 53A of the 1882 Act.

- 7. Hence, no ground to interfere is made out.
- 8. Dismissed accordingly.
- 9. All the pending miscellaneous applications, if any, are also disposed of.

January 31st, 2024
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(ANIL KSHETARPAL)
JUDGE

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