



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

RSA-816-1994 (O&M)

Date of decision: 06.05.2024

Meer Singh and others

....Appellants

Versus

Partap Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Amit Jain, Sr. Advocate with
Mr. Aryaman Thakur, Advocate for the appellants

Mr.S.D.Bansal and
Mr. Jeevan Gautam, Advocates for the respondents

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for possession by way of superior right of pre-emption on the ground that the plaintiffs are co-sharers.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Sh.Ishwar Singh etc were owners of undivided portion of land in the joint Khewat. They sold 120 kanals 8 marlas land out of the total land measuring 240 kanals 17 marlas to defendant no.1 to 9 vide registered sale deed dated 16.12.1986, for a sum of Rs.1,35,500/-. The

plaintiffs namely Partap Singh etc. filed a suit for possession by way of pre-emption in order to pre-empt the sale deed. The defendants (appellants herein) contested the suit on the ground that by virtue of two unregistered writings dated 14.01.1984 and 26.01.1986, they had purchased 40 sq. yards and 1 marla plots and they thus have become co-sharers. Upon appreciation of evidence, both the courts have decreed the suit on the ground that the defendants have failed to prove that they are co-sharers.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the scanned copy of the lower court's record.

5. Learned senior counsel representing the appellants submits that the defendants examined in oral evidence 10 witnesses, however, both the courts have failed to discuss the evidence. He submits that unregistered sale deed for an amount less than Rs.100/- is permissible.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. It will be noted here that both the writings Ex.D1 and D2 are executed on a plain paper. These have not been scribed by any professional scribe. There is no documentary evidence to prove that these documents were executed on 14.01.1984 and 26.01.1986. Both the courts have found that such documents can be created at any point of time in order to defeat the right of pre-emption. The courts have further found that oral evidence of the defendants is not believable.

8. In this case, concurrent findings of fact have been arrived at by the courts below after appreciating the evidence. Though the courts have failed to discuss the oral evidence in detail, however, both the courts have held that such evidence in the facts of the present case is not believable. Moreover, this aspect falls in the domain of re-appreciation of the entire evidence in the facts of the case, which is not permissible in view of Section 41 of the Punjab Courts Act as interpreted by the Supreme Court in **Randhir Kaur vs. Prithi Pal Singh 2019 (17) SCC 71, Dhanpat vs. Sheo Ram (deceased) through Lrs and others 2020 (16) SCC 209 and Avtar Kaur vs. Bimla Devi, 2021 (13) SCC 816,**

9. Keeping in view the aforesaid facts, no ground to interfere is made out.

10. Hence, dismissed.

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

06.05.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE