



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

(110)

RSA-2181-2019 (O&M)
Date of Decision:-**11.11.2024**

BEERO @ ASHA RANI AND ORS

... Appellants

Versus

BAWI

... Respondent

-.-

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present:- Ms. Ravinder Kaur Manaise, Advocate
for the appellants.

ALOK JAIN, J. (Oral)

1. Present appeal arises out of the *lis* between the parties whereby the respondent-plaintiff instituted civil suit for possession of the house consisting of a room, Deori and open yard shown as ABCD in the site plan and also for suit for permanent injunction restraining the appellants-defendants from illegal and forcibly demolishing the superstructure i.e. room and Deori in the house in dispute.

2. The suit of respondent/plaintiff was partly decreed and trial Court returned the finding that the plaintiff (respondent herein) seeking specific portion could not acceded to, however, held that the plaintiff is owner of 2 ½ marlas of land as per sale deed dated 09.06.1981 and hence she is held entitled only for the possession of the said area. However, a condition was imposed as to the fact that since 2 ½ marlas of area was not capable of demarcation at that point of time, therefore, plaintiff (respondent) was



granted liberty to get the house partitioned. Further prayer of injunction was rejected and the plaintiff did not file any appeal against the said finding. Subsequently the present appellants filed an appeal before the 1st Appellate Court and the same was dismissed by the learned Appellate Court.

3. Learned counsel for the appellants has vehemently argued the matter at length and has submitted that Kharaiti Lal was married to present appellant and during the subsistence of marriage, he married to respondent (plaintiff) Bawi in the year 1982. It is further submitted that the deceased Kharaiti Lal executed a Will dated 08.06.2011, in favour of appellant, which was duly proved in accordance with law wherein the details of the property bequeathed in favour of present appellants exactly match with the sale deed dated 24.06.1975 vide which Kharaiti Lal had bought the land from Ajodhia Nath. Learned counsel for the appellants vehemently submitted that the sale deed dated 09.06.1981 executed by Kharati Lal in favour of respondent-plaintiff, could not be relied upon as the measurements and the identification of the property was not clear therein. Therefore, learned Trial Court and learned First Appellate Court erred in law and facts in partly allowing the suit by not considering the above-mentioned facts, particularly when no *Khasra* number has been mentioned in the sale deed alleged to be executed by Late Kharati Lal in favour of respondent-plaintiff nor in the plaint any specific dimensions or area of suit property was averred by the plaintiff

4. Heard learned counsel for the appellant and perused the record.

5. The trial Court while deciding the suit and the entire evidence has returned to the finding that the sale deed dated 09.06.1981 in favour of the respondent (plaintiff) was duly proved since the sale deed was prior in



time and thereby restored rights in favour of the respondent (original plaintiff) and hence mainly because the identification of the land in the Will and the sale deed by which said property was purchased match could not oust the right of the respondent. Admittedly the deceased Kharaiti Lal married the respondent-Bawi after the sale deed dated 09.06.1981 and the suit filed by the respondent-plaintiff was qua the said house only, the trial Court considering the entire matter has rightly returned the finding that since area of 2 ½ marlas being not capable of demarcation, therefore plaintiff is held in possession of area of 2 ½ marlas of land only after getting the house partitioned in accordance with law.

5. In the light of the above, concurrent finding returned by the Courts below, I do not find any ground to interfere in the same and accordingly the present appeal is hereby dismissed.

6. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

11.11.2024
Gaurav Sorot

(ALOK JAIN)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No