



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

RSA-2393-2000(O&M)

Date of decision : 29.05.2024

Smt. Raj Bala and others

...Appellants

Vs.

The Tehsildar Sales, Gurgaon and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhir Aggarwal, Advocate
 for the appellants.

 Mr. Ashok S. Chaudhary, Addl. A.G. Haryana
 for respondents No. 1 and 2.

ANIL KSHETARPAL, J. (Oral)

1. In this regular second appeal, the plaintiffs assail the correctness of concurrent findings of fact arrived at by the Courts below while dismissing their suit for grant of decree of permanent injunction restraining the defendants from taking possession and from demolishing the existing construction.

2. While filing the suit, the plaintiffs have claimed to be in possession of the property for more than 40 years without any obstruction or objection. Hence, they claim to have become the owner of the same. They have also assailed the correctness of the Tehsildar's 'Sales letter' dated 08.04.1986, seeking removal of illegal possession. The defendants while contesting the suit have claimed that Sh. Bashir Ahmad, a Muslim migrated to Pakistan, was the owner of the property. After his migration, the suit property automatically

vested in the custodian by operation of law and the plaintiffs are not in continuous possession for 40 years. In fact, it was claimed that the plaintiffs are in an unauthorized possession.

3. Both the Courts upon appreciation of evidence came to conclusion that the plaintiffs have failed to prove that they had become the owners by way of adverse possession.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

5. Learned counsel representing the appellants submits that the plaintiffs' possession is admitted by the defendants. Hence, the Court should have granted the decree of permanent injunction.

6. This Court has considered the submissions put forth by the learned counsel representing the appellants, however, finds no merit therein. The Apex Court has laid down three mandatory requirements to be fulfilled for the grant of a decree of temporary injunction. These tests shall also apply for the grant of decree of permanent injunction. Before an injunction can be granted, the plaintiff is required to prove that he has a *prima facie* case, the balance of convenience is in his favour and he shall suffer irreparable loss and injury if the injunction is not granted. The plaintiffs have failed to prove any right, title or interest in the property. They have also failed to prove that they have become the owners by way of adverse possession. The respondents have claimed that the property vests in the custodian department being the evacuee property. Hence, it is a part of the public property. The respondents have already issued notice to the plaintiffs in accordance with law.

7. Hence, no ground to interfere is made out.
8. The Regular Second Appeal stands dismissed.
9. All the pending miscellaneous applications, if any, are also
disposed of.

29.05.2024

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Whether speaking/reasoned :

Whether Reportable :

(ANIL KSHETARPAL)

JUDGE

Yes No

Yes No