

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

RSA No.3871 of 2013 (O&M)

Date of decision:04.12. 2015

Dee Cee

-Appellant

Versus

Lal Chand

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Raj Kumar Kakkar, Advocate
for the appellant.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Defendant is in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction.

[2]. Plaintiff alleged that father of the plaintiff was living in the suit property. After his death, he is in possession of the same. Defendant contested the suit on the ground that father of the defendant purchased the suit property vide sale deed dated 03.01.1956 from one Raja Ram. Some part of the land was sold to one Sadhu Ram and suit land was mortgaged by the defendant in favour of Hari Krishan son of Devi Chand i.e. brother of the plaintiff. Brother of the plaintiff is claimed to be in

possession of the suit land. Defendant further alleged that neither Devi Chand was owner/mortgagee of the suit land, nor he was in possession. Plaintiff might have obtained electricity and water connection bills in collusion with his brother namely Hari Krishan.

[3]. On the basis of pleadings of the parties following issues were framed:-

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 2. Whether suit is not maintainable? OPD*
- 3. Whether the plaintiff has got no cause of action or locus standi to file this suit? OPD*
- 4. Relief.”*

[4]. Trial Court found the possession of the plaintiff by virtue of Exs.P2 to P7 electricity bills from March 1993 onwards. Exhibits P8 and P9 are the sewerage connection bills. The defendant only produced the sale deed Ex.D2 on record. No mortgage deed is forthcoming. Even the defendant while appearing in the witness box has admitted in his cross examination that he is not in possession of any document, nor he proved the particulars of mortgage with reference to year of commencement and nature of mortgage.

[5]. Admittedly, he is non-resident villager, rather he is living in Hanumangarh from the last 27 years. Defendant himself

admitted that brother of the plaintiff is in possession over suit house. He neither filed any suit against the brother of the plaintiff in the last 27 years, nor filed any proceeding against the plaintiff in respect of taking possession.

[6]. Both the Courts have concurrently appreciated the material on record, while arriving at the conclusion that the plaintiff has been able to prove his possession over the suit land. The findings so recorded by the trial Court were even affirmed by the lower Appellate Court.

[7]. Re-appreciation of evidence in second appeal in considered opinion of this Court is not permissible as no other view is possible. Questions as formulated by the appellant in para No.7 of the grounds of appeal are not questions of law much less substantial questions of law. The questions as formulated are revolving around factual details which have been appreciated by the Courts below and cannot be held to be result of misreading of evidence or having suffered with any perversity. This Court does not feel like to interfere in this appeal. Consequently this appeal is dismissed.

[8]. Since the appeal is being decided on merits, there is no necessity to go into the merits of the application for condonation of delay in filing the appeal.

(RAJ MOHAN SINGH)
JUDGE

December 04, 2015

prince