

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

Date of Decision: November 30, 2016

1. **R.S.A.No.4125 of 2010**

Ram Lubhaya & another

...Appellant

Versus

Ashok Kumar

...Respondent

2. **R.S.A.No.4126 of 2010**

Ram Lubhaya & another

...Appellant

Versus

Ashok Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Amarjit Singh, Advocate,
for the appellants in both the appeals.

Mr.Harkirat Singh, Advocate,
for the respondent in both the appeals.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeals bearing No.4125 and 4126 of 2010 as the common questions of law and fact are involved in both the appeals.

Both the appeals are arising out of the decretal of the suit seeking injunction against the appellants and dismissal of the counter-claim of the appellants.

Mr.Kanwaljit Singh, learned Senior Counsel assisted by

Mr.Amarjeet Singh, Advocated representing the appellants submits that the

respondent had instituted the suit bearing No.85 of 2000 seeking injunction qua forcible interference and dispossession, whereas the appellants had set up a counter-claim seeking possession on the basis of the sale deed dated 6.3.2000 executed by Amar Kaur. The case of the respondent-plaintiff Ashok Kumar was that he had been paying rent to Amar Kaur, whereas the owner of the property was Kartar Singh and Thakur Singh. No efforts have been made to prove the same. The inscription of the property would not clothe the status of the ownership and the same has been proved through the testimony of attesting witness, therefore, the Courts ought not to have non-suited the appellants vis-a-vis counter-claim on the premise that the ownership of Amar Kaur has not been proved, in essence as to whether Amar Kaur had a valid title or not. The registered sale deed carries a presumption of truth and, therefore, in the absence of any rebuttal, the same should have been looked into and, thus, there is gross illegality and perversity. Granting of injunction in favour of the tenant qua forcible interference and dispossession would pale into insignificance once the counter-claim was set up by the appellants.

Mr.Harkirat Singh, learned counsel appearing on behalf of Ashok Kumar-plaintiff, respondent in the counter-claim, submits that nothing prevented the appellants to examine Amar Kaur to show the ownership since the rent was being received by her on behalf of Kartar Singh and Thakur Singh. If at all, it was not so, the truth would have surfaced had she been examined. In the absence of the same, the counter claimants have miserably failed to prove the ownership and rightly so, the counter-claim has been dismissed and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submission of Mr.Kanwaljit Singh. The appellants should have set up the title in pursuance to the sale deed dated 6.3.2000, though the land in dispute is situated within the lal lakir of Village Aur, District Nawanshahr, now S.B.S.Nagar. Having failed to produce Amar Kaur was fatal to their case. The electricity bills and telephone bills would not clothe Amar Kaur with the ownership of the property.

The argument of Mr.Kanwaljit Singh that the onus to prove the ownership was upon the plaintiff is fully misplaced. The person, who asserts the title in the property, is required to discharge the same by leading direct and cogent, much less corroborative evidence. Having failed to do so, I am of the view that the findings rendered by both the Courts below are perfectly legal and justified.

For the foregoing reasons, no ground for interference is made out.

Appeals stand dismissed.

At this stage, Mr.Kanwaljit Singh submits that liberty be granted to the appellants to file an independent suit for setting up the title provided the findings rendered in the civil suit for seeking possession may not come in their way. In case the suit is permissible in law, nothing prevents the appellants to file the suit. In case any such suit is filed, the findings given by the Court in the suit for possession qua title shall not be rendered against the appellants as no evidence qua the same has been led.

November 30, 2016

(AMIT RAWAL)

ramesh

JUDGE

**Whether speaking/reasoned
Whether Reportable:**

**Yes/No
Yes/No**