

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

**RSA-3612-2011 (O&M)
Date of decision: 30.05.2016**

Swaran Singh

...Appellant

Versus

Rupinder Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S. K. Arora, Advocate
for the appellant.

Mr. A. S. Sodhi, Advocate
for respondent Nos.1 to 3.

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JITENDRA CHAUHAN, J.

CM No.10209-C of 2011

Despite the repeated opportunities, no reply has been filed
in the delay application.

After hearing the learned counsel for the parties and for the
reasons contained in the application, which is duly supported by an
affidavit, same is allowed and delay of 98 days in filing the present
appeal is condoned.

Main Case

In this regular second appeal, the appellant-plaintiff has
challenged the judgment and decree dated 04.12.2010 of Additional

District Judge, Ferozepur, wherein the appeal filed by respondent Nos.1 to 3 against the judgment and decree dated 10.08.2010 of Civil Judge (Jr. Divn.), Ferozepur, decreeing the suit of the plaintiff-appellant, has been allowed.

The learned counsel for the appellant states that the appellant is an absolute owner of the house in question, which was constructed by the appellant about 23 years ago. The respondents had entered into the said house forcibly and illegally on 11.04.2005. Affidavit, Ex.D1, vide which the respondents have claimed that they had purchased the said house, does not bear the signatures of the appellant. Therefore, the learned Ist Appellate Court erred in passing the impugned judgment and decree.

On the other hand, the learned counsel for respondent Nos.1 to 3 states that they have been residing in the said house peacefully and specifically denied the allegation of the appellant that they had forcibly and illegally entered into the said house.

I have heard the learned counsel for the parties and perused the entire record on file.

The case of the appellant is that he is absolute owner of the disputed house. In the instant case, the appellant himself has not stepped into the witness box, so an adverse inference is drawn against him. For establishing his claim, he has examined PW1-Hazara Ram,

being his general power of attorney. However, in his cross-examination, PW1 had admitted that neither he is related to the appellant nor is he residing in the area where the disputed house is situated. Further, it has come in his statement that he had no documents which could show the ownership of the appellant and that he had constructed the disputed house about 23 years ago. Even the documents i.e. Ex.P2 to Ex.P4, placed on record by the appellant do not establish the ownership of the appellant. Moreover, he has not produced the site plan of the house in question. It is now axiomatic that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. In the instant case, the plaintiff-appellant has miserably failed to prove his case. Therefore, this Court feels that the learned Ist Appellate Court has rightly returned the findings on the issues under adjudication and reversed the judgment and decree of the learned trial Court.

No substantial question of law is involved in this case. The findings recorded by learned Ist Appellate Court are hereby affirmed.

For the foregoing discussion, the instant regular second appeal is sans merit and is dismissed. No order as to costs.

30.05.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**