

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

RSA No.4845 of 2011 (O&M)
Date of decision : 08.11.2016

Shakuntala Shukla

...Appellant

Versus

CK Mittal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Amarjit Singh, Advocate for the appellant.

Mr. Avnish Mittal, Advocate for respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

CM No.14085-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 385 days in filing the appeal is condoned.

Application is allowed.

Main Case

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby suit seeking declaration to the effect that she is owner in possession of the strip of land measuring 4 feet 30 inches shown as ABCD in the annexed site plan situated at Nicholson Road, Ambala Cantt. with consequential relief of permanent injunction from forcible interference,

encroachment and dispossession, had been dismissed by both the Courts below.

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. Amarjit Singh, learned counsel appearing on behalf of appellant-plaintiff submits that suit seeking aforementioned relief was filed on the ground that plaintiff's father-in-law Late Sh. Bhagat Ram was the owner of the house No.6352/10/1, 6352/10/2, 3, 5, 6 and 16, who had sold house No.6352/10/2 to the father and uncle of defendant No.1 vide registered sale deed dated 08.10.1956 and house No.6352/10/1 to Chaman Lal who further sold to defendants vide sale deed dated 06.12.2000. He submits that judgment and decree which revolves around the earlier suit is totally against the law as there was no issue of title, particularly in suit for injunction title of the passage could be decided by the Courts below. In fact, the claim was regarding the exclusive passage, but the Courts below have held it to be common passage. The basic document i.e. sale deed dated 08.10.1956 was required to be seen which clearly mentions that four feet wide passage was to remain under the ownership of the Vendor while plot measuring 63x45 was sold to respondent-purchaser. Document was 50 years old but yet conveniently not noted by both the Courts below. All these facts have not been taken into consideration, thus, there is gross illegality and perversity.

Per contra, Mr. Avnish Mittal, learned counsel appearing on behalf of defendants-respondents submits that concurrent findings of fact cannot be interfered until and unless there is gross illegality and perversity. House No.6352/10/1 was purchased by the defendants vide sale deed dated 06.12.2000 and 6352/10/5 belongs to mother of the defendants. Matter

regarding the claim and three civil suits were already decided by the Court resulting into passing of the judgment and decree and same was made the basis for the dismissal of the suit. In fact in the aforementioned suits, it was held to be common passage and such matter had reached to this Court and the aforementioned findings had already been upheld/affirmed.

I have heard learned counsel for parties and appraised the paper book and of the view that in the previous round of litigation between the parties, there is adjudication qua common passage, the instant suit at the instance of the plaintiff is not of injunction and not maintainable yet he chose to file the same. The previous suit pertained to only injunction and it has not resulted into decision of the title. The plaintiff has miserably failed to discharge the contents of the sale deeds and attempted to take the aid of Section 90 of the Indian Evidence Act. It is in this aspect of the matter, the Court did not grant declaration as sale deed qua four feet passage being in exclusive usage by the plaintiff remain unproved.

No substantial question of law arises for determination.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

08.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No