

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

1. RSA No.5091 of 2012 (O&M)
Date of decision : 20.10.2016

Ram Sarup

...Appellant

Versus

Bhushan Parkash and others

..Respondents

2. RSA No.5173 of 2012 (O&M)
Date of decision : 20.10.2016

Ram Sarup

...Appellant

Versus

Bhushan Parkash and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. V.K. Jindal, Sr. Advocate with
Mr. Amardeep Sheoran, Advocate for appellant.

Mr. Pritam Saini, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two regular
second appeals.

The appellant-plaintiff is aggrieved of the dismissal of the civil

suit No.246 of 2000 and decretal of the civil suit No.246-A of 2000 filed by respondents against the appellants seeking injunction from forcible interference and dispossession.

Mr. V.K. Jindal, learned Senior counsel assisted by Mr. Amardeep Sheoran, learned appearing on behalf of appellant-plaintiff submits that on the basis of the Memorandum of Understanding dated 30.03.1979, the property in dispute had fallen to the share of the appellant-Ram Sarup which was done during the lifetime of Kashmiri Lal, their father who died in the year 1996. Memorandum of Understanding was witnessed by the attesting witnesses who has been examined and proved. Before the Courts below, no plea has been raised for want of registration, much less, the fact that title in the civil suit No.246-A of 2000 filed by the LRs of Mam Raj has not been proved. Memorandum of Understanding was amongst the family members and do not require any registration as they had pre-existing rights. Mandatory injunction was sought to seek the possession from the respondent being licensee which has been dismissed while deliberating upon the aforementioned Memorandum of Understanding and thus urges this Court for setting aside of the findings under challenge.

Mr. Pritam Saini, learned counsel appearing on behalf of defendants in Civil Suit No.246 of 2000 and plaintiffs in Civil Suit No.246-A of 2000 submits that once title of the property has not been proved, simplicitor suit for mandatory injunction in Suit No.1 though Suit No.246 of 2000 as licensee could not have decreed, until and unless title is decided and since LRs of Mam Raj had perpetual threat of forcible dispossession and interference, despite suit No.240 of 2000 simplicitor suit granting the

injunction, has been decreed. No prejudice would be caused to the parties until and unless title of such property is decided in the competent Court of law, injunction continues and thus urges this Court for affirming of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that since parties are at variance with regard to Memorandum of Understanding, it required registration or not, and proved in accordance with law until and unless title is not decided. In my view, suit for mandatory injunction seeking possession from the defendants in Civil Suit No.246 of 2000 branding them license was not maintainable until ownership is not decided. The parties are relegated to seek vindication of the grievance in the competent forum in accordance with law, in essence, until and unless ownership and title is not decided.

By affirming the findings under challenge, I am of the view that question of licence and licensee, could not adjudicated. Any findings arrived at by the Courts below while deciding the suit for mandatory injunction qua Memorandum of Understanding would not come into their way and the trial Court, in case any suit is filed, will decide controversy qua title uninfluenced with the same.

Accordingly, both RSAs stands disposed of.

20.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No