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

**RSA-731-2013 (O&M)**

**Date of decision : 10.03.2016**

Amrik Singh

...Appellant

Versus

Swaran Kanta

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. C.M. Munjal, Advocate  
for the appellant.

Mr. S.K. Garg Narwana, Senior Advocate with  
Mr. Karan Garg, Advocate  
for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

**AMIT RAWAL, J. (ORAL)**

**CM-1985-C-2013**

For the reasons mentioned in the application, the delay of 15 days  
in filing the appeal is condoned.

CM stands disposed of.

**RSA-731-2013**

The appellant-defendant is aggrieved of the judgment and decree  
rendered by the lower Appellate Court, whereby the suit for possession in  
respect of house consisting of 2 rooms/Chaubaras, a Varandah, a courtyard,  
two stair cases and roof on the first floor with a Staircase and a Passage on the

ground floor bearing Property No.251, bounded as East: By Bazar No.4, West: By Ravinder Sain, North: By Shop of Vidya Sagar, South: By shop of Sukhdev, situated in Bazar No.4, Ferozepore Cantt., has been decreed by the lower Appellate Court.

Mr. C.M. Munjal, learned counsel appearing on behalf of the appellant-defendant submits that vide sale deed dated 22.06.1981, the appellant-defendant purchased ground floor bearing property No.251 and 252 from the vendor, whereas, the respondent-plaintiff, vide sale deed of even date, purchased the first floor bearing property No.251. The respondent-plaintiff has failed to prove the identity of the property, much less, proved the sale deed Ex.P4, rightly so, the trial Court has dismissed the suit. The lower Appellate Court has heavily relied upon Ex.PX-4 site plan, exhibited before the Rent Controller in the proceedings instituted by the vendor seeking eviction of the respondent-plaintiff, who was inducted as tenant. The constructed portion is on shop bearing No.252 and not on 251 and rightly so, the trial Court has dismissed the suit for want of identification. In a suit for possession, identification is a condition precedent, having failed to do so, the lower Appellate Court has committed illegality and perversity in decreeing the suit and thus, urges to this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr. S.K. Garg Narwana, learned Senior Counsel assisted by Mr. Karan Garg, learned counsel appearing on behalf of the respondent-plaintiff submits that the sale deed Ex.P-4 bears the registration No.2653, whereas that of appellant-defendant 2654 and 2655. The site plan annexed with the sale deed is Ex.PX-6, which is part and parcel of the decree, whereby the site plan

of first floor of shop No.251, situated in Bazar No.4, Ferozepore Cantt., purchased by the respondent-plaintiff has been described, as consisting of 2 rooms/Chaubaras, a Varandah, a courtyard, Stairs etc. The appellant-defendant is creating a hindrance, taking the advantage of the respondent-plaintiff, being widow and could not buy the first floor, on the premise that the husband of the respondent-plaintiff was inducted as tenant and ultimately having left with no other option, but to purchase the same, thus, there is no illegality and perversity in the judgment and decree of the lower Appellate Court which is based upon the appreciation of oral and documentary evidence being the last Court of fact and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal, for the reason that the sale deed Ex.P-4 dated 22.06.1991, accompanied by the site plan Ex.PX-6 which describes the constructed portion of the property bearing No. 251 along with stair case, whereas the appellant-defendant had purchased the ground floor of 251 and 252. By joining the both the shops as 251-252, the appellant-defendant are taking the advantage of parting the right of the respondent-plaintiff by raising the issue of identity, whereas on perusal of the sale deeds of the appellant-defendant and the respondent-plaintiff, the owner is none-else, but same and its description is also bounded in the same manner as has been mentioned in the sale of the respondent-plaintiff. The site plan Ex.PX-4 also shows the description of the plan of first floor of shop No.251, in essence, the respondent-plaintiff along with her husband were residing at the first floor of shop No.251, as tenant and thereafter, purchased the shop, but taking the advantage of the death of the husband of the respondent-plaintiff, the

appellant-defendant had taken forcible possession, in this context, the suit for possession was filed. The suit has been filed in the year 2006 and the respondent-plaintiff deprived of for possession till date, though the trial Court dismissed the suit and the mesne profits as claimed have not been determined, much less, granted in favour of the respondent-plaintiff.

Keeping in view the aforementioned facts and circumstances, I am of the view that there is no merit in the appeal, much less, no substantial question of law arises for determination.

The Court is constrained to pass the following directions, for the reason that there is every likelihood that appellant/plaintiff would create impediment and hurdle by filing the objections, viz-a-viz the execution of the judgment and decree, therefore, he is directed to hand over the possession of the first floor of shop No.251, as mentioned in the site plan Ex.PX-6 accompanied by the site plan Ex.PX4, within a period of one month from the receipt of the certified copy of this order. In case, the possession is not handed over, the Senior Superintendent of Police, Ferozepur is directed to provide police assistance enabling the respondent-plaintiff to take the possession in accordance with law.

This direction has been passed while taking into consideration peculiar facts and circumstances of the case.

With the aforesaid observations, the appeal is dismissed.

**10.03.2016**  
yogesh

**( AMIT RAWAL )**  
**JUDGE**

