

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

RSA No.3820 of 2016 (O&M)

Date of Decision.01.12.2016

Satbir Singh son of Shri Kartar Singh

.....Appellant

Vs

Resham Singh

.....Respondent

Present: Mr. Kul Bhushan Sharma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.9935-C of 2016

For the reasons stated in the application, delay of 17 days in
filing the appeal is condoned.

Application is allowed.

RSA No.3820 of 2016

The appellant-plaintiff is aggrieved of the concurrent finding of
fact whereby the suit seeking permanent injunction has been dismissed.

Mr. Kulbhushan Sharma, learned counsel appearing for the
appellant submits that the injunction had been sought on the basis of the
title i.e. sale deed dated 11.07.1996 measuring 10 marlas. No doubt the
appellant-plaintiff did not appear in the witness box but the registered
document carries presumption of truth and the contents thereof have to be
looked into in view of the provisions of Section 91 of the Indian Evidence
Act.

He further submits that the lower Appellate Court has exceeded
jurisdiction in giving a passing reference that the plaintiff has not been held
to be owner in possession of the suit property at page 43 of the paper book,

for, the stand of the defendant qua challenging the sale deed without setting up a counter claim has been negated, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that in the absence of direct, cogent and corroborative evidence viz-a-viz the possession, the appellant cannot be granted relief of permanent injunction. It was incumbent upon the appellant-plaintiff to lead evidence in support of his claim. Having failed to examine himself, it appears that the appellant-plaintiff remained most lackadaisical and adopted a tardy approach.

As regards the finding rendered by the lower Appellate Court holding the appellant-plaintiff not to be owner in possession was not called for in the absence of framing any issue qua title. Therefore, the aforementioned finding, in my view, was not required to be incorporated and thus held to be “obiter”. Rest of the judgments and decrees of the Courts below are affirmed.

In view of the aforementioned, I do not intend to differ with the judgments and decrees rendered by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 01, 2016

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No