

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

RSA-5113 of 2015 (O&M)

Date of decision: 04.02.2016

Ajay Kumar

...Appellant(s)

Versus

Surender Kumar

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sajjan Singh Malik, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

CM-12236-2015

Heard.

For the reasons stated in the CM application, the same is allowed and the delay of 50 days in filing the appeal is condoned.

Main appeal

The instant regular second appeal has been preferred against the judgment and decree dated 23.03.2013, passed by the Additional Civil Judge (Sr. Division), Siwani, Camp at Bhiwani

(for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant had been partly decreed; and judgment and decree dated 05.05.2015, passed by the learned Additional District Judge, Bhiwani (for short, 'the first Appellate Court'), whereby, the appeal preferred by the plaintiff-appellant against the impugned judgment and decree dated 23.03.2013, of the trial Court, had also been dismissed.

The plaintiff filed suit for permanent injunction, restraining the defendant from interfering into the peaceful possession of the plaintiff as well as from changing the nature of the house in question, marked as “ABCD” detailed in the headnote of the plaint. The trial Court, vide impugned judgment and decree dated 23.03.2013, partly decreed the suit and a decree of permanent injunction restraining the defendant from interfering as well as dispossessing the plaintiff from the house in question at ground floor only, except in due course of law, was passed in favour of the plaintiff

The appeal filed by the plaintiff was dismissed by the learned first Appellate Court, vide impugned judgment and decree dated 05.05.2015.

Hence, this appeal at the behest of the plaintiff.

Learned counsel for the appellant refers to the rent

deed, Ex.D-1 to state that the entire house including the roof was rented out.

I have heard learned counsel for the appellant and gone through the case file.

The only grievance of the tenant-appellant is that the roof right is part of the tenancy created vide rent-deed dated 21.05.2005, Ex.D1. Where an admitted document, Ex.D1 is before the Court, both the parties are admitting the execution thereof and relying upon it, then no other oral evidence is to be taken into consideration. While evaluating the evidence, the trial Court held that Surender Kumar, landlord, had rented out the house in question to the tenant, Ajay Kumar, to the extent of ground floor only and the plaintiff had no right to use the roof of the house in question. This view was affirmed by the first Appellate Court.

Both the Courts below, after analyzing the evidence on record, have recorded the finding that the defendant rented out the premises to the extent of ground floor alone. It is also proved on record that both the plaintiff and the defendant have been using the same staircase and subsequent to renting it out, the defendant-respondent has raised construction over the first floor of the house in question. The appellant has also admitted this fact in his cross-examination.

On consideration, this Court finds that the contentions have no merit as it only relates to the appreciation of evidence. No evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

04.02.2016

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**(JITENDRA CHAUHAN)
JUDGE**