

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

RSA-3387-2014 (O&M)

Date of decision: 08.02.2016

Mohinder Kumar Miglani and others

...Appellant(s)

Versus

Ravi Nandan and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Surinder Gaur, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 08.03.2011, passed by the learned Civil Judge (Senior Division), Kaithal (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been decreed; and judgment and decree dated 12.12.2013, passed by the learned Additional District Judge, Kaithal, (for short, the first Appellate Court), whereby, the appeal preferred by the defendant-appellant against the impugned judgment and decree dated 08.03.2011, of the trial Court, has been dismissed.

The plaintiff filed a suit for permanent injunction

directing appellant/defendant Nos.1 to 6 to facilitate the change of entry of ownership rights of plot No.50 of Scheme Nos.8 and 9, drawn by respondent-defendant No.7 and further to restrain defendant Nos.1 to 6 from interfering in his peaceful possession over the suit property. The suit of the plaintiff was decreed vide impugned judgment dated 08.03.2011.

The learned first Appellate Court dismissed the appeal of appellants-defendant Nos.1 to 6 vide impugned judgment and order dated 12.12.2013, by holding that the appeal was not maintainable.

Hence, this appeal at the behest of defendant Nos.1 to 6.

It is contended that the learned trial Court erred in not considering the fact that the Notary Public, Deepak Kumar Bhalla, Advocate, during his cross-examination had admitted that Ex.P6 and Ex.P7 were not entered in the register maintained by him. Thus, he states that in the absence of the entries, the documents, Ex.P6 and Ex.P7 deserved to be ignored. He further states that the respondent never produced any agreement to sell or any sale deed qua the property in question.

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

The trial Court decreed the suit of the plaintiff whereas, the counter claim of the appellant-defendant Nos.1 to 6 was dismissed with costs vide judgment and decree dated 08.03.2011, restraining the appellants-defendant Nos.1 to 6 from interfering in the peaceful possession of the plaintiff over the shop in question. It was further directed that respondent-defendant No.7 shall transfer the shop in question in favour of the plaintiff. The appellants challenged the decree with regard to the decretal claim in favour of the plaintiff and chose not to file any appeal assailing the dismissal of their counter-claim, as is evident from the head-note of the appeal preferred under Section 96 of the Code of Civil Procedure against the judgment and decree dated 08.03.2011 passed in suit No.153 of 2005. The learned counsel for the appellants has fairly admitted that they did not challenge the dismissal of their counter-claim. Thus, the short question involved in the present case is whether without laying challenge to the dismissal of the counter-claim, the appeal could be entertained or not.

The counter-claim is another form of a cross-claim and would have the same effect as that of a cross suit to enable the Court to decide the claim of the parties in the same suit on the

original claim as well as on the counter claim. This Court feels that the learned first Appellate Court rightly held on account of the non-challenge to the dismissal of the counter claim, the same has attained finality and rendered the appeal preferred by the appellant-defendants as non-maintainable. The learned counsel has not been able to refer to any contrary view.

No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

08.02.2016

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(JITENDRA CHAUHAN)
JUDGE