

CR No. 5495 of 2015
CR No. 5496 of 2015

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

CR No. 5495 of 2015
Date of Decision: 30.08.2017

MAMTA

-PETITIONER

VS

BANWARI LAL AND ANOTHER

-RESPONDENTS

CR No. 5496 of 2015

MAMTA

-PETITIONER

VS

BANWARI LAL AND ANOTHER

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sarju Puri, Advocate,
for the petitioner(s).

Mr. Varun Sharma, Advocate, and
Mr. Anil Sharma, Advocate,
for respondent No.1.

None for respondent No.2.

RAJ MOHAN SINGH, J. (ORAL)

Vide this common order, Civil Revision No.5495 of
2015 titled **Mamta vs Banwari Lal and another** and Civil
Revision No.5496 of 2015 titled **Mamta vs Banwari Lal and
another** are being disposed of.

Petitioner has assailed the order dated 17.10.2013

passed by Civil Judge (Junior Division), SBS Nagar whereby application under Order 39 Rules 1 and 2 CPC was dismissed and the order dated 11.08.2015 passed by lower Appellate Court whereby order of the trial Court was partly modified.

Plaintiff filed a suit for declaration to the effect that the plaintiff is owner in possession of the shop along with its roof and verandah as detailed in the plaint. Plaintiff made a specific recital in para No.2 of the plaint that since sale deed dated 02.01.2009, the plaintiff has been using the roof of the shop in dispute and has installed a water tank and parts of air conditioner at the roof.

Defendants never objected to the use of the roof by the plaintiff and there is no approach to the roof except through the property purchased by the plaintiff. An application under Order 39 Rules 1 and 2 CPC was also filed along with the plaint. Defendant No.1 has not set up any counter claim along with the written statement. Injunction was refused by the trial Court in toto.

During pendency of miscellaneous appeal before the lower Appellate Court, there was no occasion for the defendants to file cross objections as there was no order adverse to their interest passed by the trial Court.

Learned counsel further relied upon the recital of the

sale deed and contended that the first part of the sale deed gives absolute ownership to the plaintiff qua the shop and the second part of the sale deed is in utter contradiction of the earlier part.

Learned counsel further stated that the trial Court is required to preserve the suit property till conclusion of the trial.

Learned counsel for respondent No.1, however, opposed the arguments of learned counsel for the petitioner on the ground that recital of the sale deed is specific in nature whereby the vendor has specifically reserved his right to sell the roof at a subsequent stage.

Be that as it may, all the pleas and counter pleas would be subject to decision by the trial Court with reference to the evidence, likely to be adduced by the parties at the relevant stage.

Keeping in view the contentions raised by both the sides, I am of the view that in view of ratio laid down in **Maharwal Khewaji Trust (Regd.) Faridkot vs Baldev Dass 2004(4) RCR (Civil) 760**, subject matter of suit property has to be preserved during pendency of the suit.

In view of above, it would be just and appropriate to direct the parties to maintain status quo regarding possession and nature of suit property during pendency of the suit.

Disposed of.

However, the trial Court shall make every endeavor to dispose of the suit at the earliest.

30.08.2017
jjyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No