

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

**RSA No.1402 of 1995 (O&M)
Date of Order: 06.09.2017**

Bimal Kumar Mehta

..Appellant

Versus

Ram Lal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Suri, Advocate,
for the appellant.

Mr. Amit Jain, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff claims ownership of the disputed property on the basis of conveyance deed executed by the Department of Custodian, dated 08.09.1990.

Defendants, on the other hand, claimed ownership on the basis of a sale deed executed on 19.09.1973 in their favour Ex.DW5/1. It is the case of the defendants that previously brother of the plaintiff (defendant no.3) was a tenant under defendants no.1 and 2. Defendants no.1 and 2 filed an eviction application against defendant no.3 i.e., the brother of the plaintiff. Defendant no.3 was ordered to be evicted. In those proceedings, plaintiff appeared as a witness on behalf of his brother. Appeal filed by defendant no.3 was also dismissed. Both the Courts have found that the plaintiff has failed to prove that this property was ever declared evacuee

property. No notification under Section 7 of the Administration of Evacuee Property Act, 1950 has been placed on the file. Even no notice has been placed on the file, which may have been issued to the concerned person before declaring the property to be evacuee property. It has been found by the Courts that the defendants have proved their title in the property.

I have heard counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that as per Section 46 read with Section 28 of the Administration of Evacuee Property Act, 1950, the jurisdiction of the Civil Court is barred to examine whether a particular property is evacuee property or not? He submits that, therefore, the Courts were not correct in returning a finding that the property is not an evacuee property.

I have considered the submission of learned counsel. However, I do not find any force in the same.

It is the plaintiff-appellant who had filed a suit in the Civil Court. Plaintiff had himself approached the Civil Court claiming right in the property. Still further both the Courts have found that there is no notification available on the file to prove that this property was ever declared to be evacuee property. Plaintiff has examined Karnail Singh, PW3, who is an official from the evacuee department. He has not been able to produce any document that this property was ever declared to be evacuee property. In these circumstances, the Civil Court has the jurisdiction to try and decide the suit.

Learned counsel for the appellant has further drawn my attention to the site plan produced on the file.

The site plan would not prove the title in the property. Defendants have produced on file a rent note executed by defendant no.3-brother of the plaintiff, dated 10.02.1976, Ex.D1/X on the file. It is, thereafter, the plaintiff who started conspiring to grab the property and started moving application to the department of Administration of Evacuee Property.

In view of the discussion made hereinabove, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is dismissed.

September 06, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No