

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

1. RSA No.1623 of 2017 (O&M)
Date of decision : 02.11.2017

Shri Ram (Now Deceased) through his Legal Heirs Vijay Kumar and others
...Appellants

Versus

Harjinder Singh and another
...Respondents

2. RSA No.1143 of 1998 (O&M)
Date of decision : 02.11.2017

Shri Ram (Now Deceased) through his LRs and others
...Appellants

Versus

Inderjit Singh and others
...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Bikramjit Aroura, Advocate for the appellants
(In RSA No.1623 of 2017)

Mr. Sukhbir Singh, Advocate for the appellants
(In RSA No.1143 of 1998)

Mr. Jasinder Singh Thind, Advocate for the respondents
(In both appeals)

ANIL KSHETARPAL, J. (ORAL)

By this common judgment, I shall be disposing of RSA
No.1623 of 2017 and RSA No.1143 of 1998.

In RSA No.1143 of 1998, plaintiff-appellant namely Shri Ram (appellant in both the appeals) filed a suit for permanent injunction claiming that he has inherited the property from his ancestors.

Learned trial Court decreed the suit after recording a finding that the defendants who claim to have purchase the property vide sale deed dated 04.01.1995 has not been able to connect the shop in dispute with the property purchased through sale deed. Decree for injunction was thus granted.

In appeal, learned First Appellate Court partly accepted the appeal and maintained decree only with respect to injunction giving liberty to the defendants to seek possession of the property in dispute through the process of law. The learned First Appellate Court found that the plaintiff-Shri Ram has no right, title or interest in the property in dispute and the defendants are the owners of the property.

The plaintiff-appellant is in Second Appeal.

Learned counsel for the appellant has vehemently argued that the finding of the trial Court that the sale deed Ex.D1 dated 04.01.1995 does not connect with the shop in dispute, has not been set aside, therefore, the plaintiff ought to have declared owner of the property.

I have heard learned counsel for the parties at length and with their able assistance gone through the record of the case.

It is not in dispute that the defendants did purchase the shop through sale deed dated 04.01.1995. With the help of the counsels, I have compared the properties mentioned on all the four directions namely north, east, west and south of the shop as given in the sale deed as well as in the

plaint. Details of three directions as given in the sale deed and in the plaint are exactly matching with each other. Still further, the plaintiff had come to Court claiming that he is owner of the property after having inherited the same from his predecessor.

The plaintiff failed to produce any evidence. In these circumstances, learned First Appellate Court was correct in decreeing the suit filed by the plaintiff only qua injunction and permitting the defendants in the suit to seek possession in accordance with law.

For the reasons recorded above, there is no ground to interfere with the judgment passed by the First Appellate Court.

This is consequential suit filed by Harjinder Singh and Inderjit Singh for passing a decree for possession.

Both the Courts below have decreed the suit filed by the plaintiffs. Defendant Shri Ram is in appeal.

Learned counsel for the appellants has submitted that the certified copy of the sale deed was produced on the file and the original was not brought on record, therefore, the sale deed could not be looked into because it was not a primary evidence.

I have considered the submission of the learned counsel.

It is not in dispute that the certified copy of the sale deed was exhibited as Ex.PW3/1. The Registry Clerk and the Scribe were examined. Although, defendant-appellant did object to the production, however, thereafter the defendant-appellant did not bring this fact to the notice of either the trial Court or before the First Appellate Court. Now for the first time, in this Court, the appellant cannot be permitted to raise a point which

was not pressed before the Courts below.

In any case, this litigation is only consequential in nature. Once the appellant has been held to have no right, title or interest in the property, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, both the appeals are dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

02.11.2017

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**