

RSA-647-1992 (O&M)

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

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Date of decision : 05.10.2018

Phool Chand and another

... Appellants

Versus

Nanak Chand

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: None for the appellants.

Mr. Ajay Jain, Advocate
for the respondent.

AMIT RAWAL, J.

The present regular second appeal is at the instance of the appellants-defendants against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for permanent injunction seeking restraint order against the defendants from opening any door towards eastern side of the property and interference in possession, has been decreed by the trial Court and affirmed by the lower Appellate Court.

The respondent-plaintiff instituted the suit claiming to be owner of the property bounded as eastern side shop of Bhola Ram, Mool Chand Western side, Hira Lal Northern side and chowk Southern side and had been in possession of the property from the time of their fore-father. On the Eastern side of the property, there was property owned by Bhola Ram, who died issueless and after his death, defendants took possession of the

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property forcibly and illegally and wanted to open door towards Eastern side of the property. Hence this suit.

The suit, aforementioned, was contested, where it was stated that the property towards Eastern side of the property of the plaintiff was owned and possessed by the defendants, which was inherited by them through their grandfather Ganpat, who became the owner of the property through Bhola by virtue of gift deed (Ex.D1).

Since the parties were at variance, the trial Court framed as many as eleven issues including the relief. Both the parties led evidence in support of their respective case.

On the basis of the evidence brought on record, the trial Court after noticing that the defendants in the evidence admitted the plaintiff to be owner in possession of property marked in red colour in the site plan (Ex.P1), decreed the suit. The lower Appellate Court in appeal also did not agree with the contentions of the appellants-defendants.

Today, there is no representation on behalf of the appellants-defendants, even on 31.08.2018, 20.07.2018.

Since the appeal is of the year 1992, I proceed to decide the same on merits.

The case set up by the appellants-defendants was that the judgments and decrees of the Courts below are not sustainable in the eyes of law as there is gross illegality and perversity, for, the site plan has not been appreciated in correct perspective, but claimed that the property was gifted by Bhola Ram to their father, therefore, the ownership was of the defendants. The possession was as a result of the aforementioned document i.e. gift deed (Ex.D1). The boundaries described in the gift deed

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have not been referred to in correct perspective, much less, issue was also not framed as per the pleadings of the parties. Local Commissioner inspected the premises and submitted a report dated 21.11.1986 in a suit titled as “Phool Chand V/s Nanag Chand”, where it was proved that the plaintiff attempted to encroach on the common chowk. The statement of Rajinder Kumar, Draftsman PW1, proved that he did not prepare the site plan by visiting the spot.

On the other hand, Mr. Ajay Jain, learned counsel appearing on behalf of the respondent-plaintiff submitted that the concurrent findings of fact and law cannot be interfered with until and unless there is gross illegality and perversity as the boundary in the gift deed were entirely different, therefore, the defendants had no right to encroach the property. If at all, they had any right and title, they could have set up a counter-claim or filed independent proceedings, thus, urges this Court for dismissal of the present regular second appeal by upholding the concurrent findings of fact, under challenge.

I have heard learned counsel for the respondent-plaintiff, appraised the paper book as well as records of the Courts below and of the view that there is no merit and force in the present appeal, for, the boundary described in the gift deed did not tally with the site plan (Ex.P1) as boundary were different as per the actual spot, therefore, report of the Local Commissioner, as per the grounds of appeal, would be meaningless. The appellants-defendants, Phool Chand and Naresh, had not been able to prove relationship with Ganpat, who inherited the property by virtue of gift deed (Ex.D1) from Bhola Ram. All these factors weighed in the mind of the Courts below.

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I cannot remain oblivious of the fact that this appeal was admitted on 28.01.1993 without any interim stay.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees of the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

The present regular second appeal is, accordingly, dismissed.

05.10.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No