

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

RSA-110 of 2016

Date of decision : 14.5.2018

Hoshiar Singh

..... Petitioner

VERSUS

Rulda Ram

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Pritam Saini and Ms.Manat Anand, Advocates
for the petitioner.

Mr.Sanjeev Manrai, Senior Advocate with
Mr.Inderjeet Singh, Advocate for the respondent.

AMIT RAWAL, J.

The appellant-plaintiff is aggrieved by the judgment and decree dated 6.11.2015 rendered by the learned First Appellate Court whereby the judgment and decree of the trial Court decreeing the suit of the plaintiff has been set aside.

The appellant-plaintiff instituted a suit for possession directing the respondent-defendant to hand over the possession of the house constructed on the property measuring 6 biswas comprising in khasra No.116, khatoni No.84, village Meeranpur Bakshiwala, Tehsil Kalka, District Panchkula, consisting of six rooms, two stores, one kitchen,

one varanda and open sehan and khurli purchased by the plaintiff. Being the owner of the suit property, it had been given to the defendant and the possession of the defendant had been permissive. It was categorically pleaded that the defendant is owner of the land measuring 4 biswas which is opposite to khasra No.116, i.e. khasra No.118 which was sold by the plaintiff and his brother vide sale deed dated 13.3.1991. The defendant on repeated requests refused to vacate premises on the ground that he had received the possession over the said house in exchange vide agreement dated 1.10.2007.

The aforementioned suit was contested by raising the objections regarding the non-maintainability, lack of cause of action and suppression of true facts from the Court. On merits, the defendant has denied the ownership of the plaintiff over the house in question comprised in khasra No.116. It was averred that the defendant had been in possession of the property constructed by him nearly twenty five (25) years ago. The defendant specifically denied that the plaintiff ever entered into an agreement dated 1.10.2007 for the exchange of house in question.

Since the parties were at variance, the trial Court framed as many as eight issues. Four witnesses were examined by the plaintiff. The plaintiff also brought on

record the documentary evidence, i.e. Ex.P/1 to Ex.P/12. On the other hand, the defendant examined five witnesses and brought on record the documentary evidence, i.e. Ex.D1 to Ex.D5. The trial Court on the basis of the oral and documentary evidence decreed the suit. The First Appellate Court reversed the findings of the trial Court and dismissed the suit of the plaintiff.

Mr.Pritam Saini, learned counsel appearing on behalf of the appellant submitted that the First Appellate Court erred in dismissing the suit of the appellant-plaintiff and wrongly held that the defendant as owner of the suit property in khasra No.116 as no evidence has been placed on record to establish the same. There was gross illegality committed by the learned First Appellate Court while holding that the alleged exchange dated 1.10.2007 in respect of khasra No.116 and 118 has been proved.

Mr.Sanjeev Manrai, Senior Advocate assisted by Mr.Inderjeet Singh, Advocate for the respondent submitted that the learned First Appellate Court while exercising the powers being the Court of law and appreciating the evidence, dismissed the suit of the plaintiff. In the cross-examination, PW1-admitted the execution of the sale deed, Ex.P6 and exchange deed, Mark B, much less full and final

agreement to sell dated 17.6.1992, Ex.P7, therefore, there was no occasion for the trial Court to decree the suit of the plaintiff.

I have heard the learned counsel for the parties and appraised the paper book and am of the view that it is a fit case which requires re-visitation by the learned First Appellate Court on the ground that the finding is not only based against the documentary evidence on record. For witness may tell lie but the documents do not. The trial Court examined the records meticulously wherein it was categorically proved that the plaintiff was the owner of the khasra No.116 much less had raised construction for the defendant. The findings recorded by the learned First Appellate Court do not show that the construction on the site was raised by the defendant.

Without commenting on the merits of the case, I deem it to appropriate to remit the matter to the learned First Appellate Court to decide the appeal afresh in accordance with law.

The parties through their learned counsel are directed to appear before the learned First Appellate Court on 5.7.2018.

It is expected that the learned First Appellate Court shall expedite the matter, as early as possible, preferably within 8 months from the date of receipt of certified copy of this order.

May 14, 2018
KD

(AMIT RAWAL)
JUDGE

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes / No