

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

**RSA No.3745 of 2016 (O&M)
Date of Decision.18.05.2018**

Om Parkash

.....Appellant

Vs

Dalip Ram and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Jasuja, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

C.M. No.9785-C of 2016

For the reasons stated in the application, delay of 36 days
in re-filing the appeal is condoned.

Application is allowed.

C.M. No.9786-C of 2016

For the reasons stated in the application, delay of 15 days
in filing the appeal is condoned.

Application is allowed.

RSA No.3745 of 2016

The appellant-plaintiff is in regular second appeal
against the concurrent finding of fact whereby the suit claiming
permanent injunction against the defendants from making any illegal,
unauthorized and unwarranted interference into peaceful possession
of the plaintiff has been dismissed by both the Courts below.

The appellant-plaintiff instituted the suit for claiming
aforementioned relief on the premise that the land measuring 6 kanals

5 marlas described in the plaint situated in Revenue Estate of village Lakhewali Mutsil Kabool Shah Khuban, Hadbast No.252, Tehsil Fazilka is ownership of the Gram Panchayat of village. Earlier father of the plaintiff had been cultivating the land from last 50 years and his name had been recorded in the Canal Department as well as in Nehri Girdwari. Ganesha Ram elder brother of Teja Ram managed to get the Girdaari recorded in his name. As it was a family affair, Teja Ram did not bother to get correct the revenue entry in his name. After about 10 years father of the plaintiff stopped cultivating the land in dispute because of ill-health but the revenue entry continued in the name of Ganesha Ram. He was requested to get rectified the revenue record on receipt of certain consideration. Thereafter, a writing dated 15.05.2009 was executed in the presence of the witnesses and also special power of attorney. Resultantly, the application for correction of the khasra girdawari was submitted on 8.11.2012. Ganesha Ram died on 15.08.2009. Defendants intended to dispossess the plaintiff, therefore, cause of action arose to file the suit.

The aforementioned suit was contested by the defendants on the premise that defendants were none else but sons of Ganesha Ram. They denied the averments made in the plaint and stated that no writing or special power of attorney was executed by Ganesha Ram. Ganesh Ram had been in possession of the property, thus, prayed for dismissal of the suit.

The trial Court on the preponderance of the evidence brought on record by parties to the lis, found that the appellant-

plaintiff has not been able to prove long and settled possession to bring the case for grant of injunction. One of the factor noticed by the Courts below was of non-registration of the writing dated 15.05.2009. Resultantly, the suit was dismissed by the trial Court and affirmed by the lower Appellate Court.

Mr. Sandeep Jasuja, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgments and decrees rendered by the Courts below are not sustainable in the eyes of law, for, Ganesh Ram had expired on 15.08.2009 whereas the writing was executed on 15.05.2009. PW2 Surja Ram Lambardar and PW3 Sanjiv Makkar Advocate had been examined to prove the aforementioned writing. Original power of attorney Ex.P4, affidavit of Ganesha Ram Ex.P5 and writing dated 15.05.2009 Ex.P6 and even the application submitted to the revenue authorities for correction of the khasra girdawari had also been proved on record. Therefore, the Courts below ought not to have dismissed the suit and should have protected the possession of the appellant.

I am afraid that the aforementioned argument of Mr. Jasuja is not sustainable, for, conceded position as pleaded in the plaint was that the revenue entry continued in the name of Ganesh Ram since years together and story coined with regard to execution of the affidavit had not been proved in the manner and mode as projected. Any relinquishment of right in the property having value of more than Rs.100/- is required registration and concededly, the aforementioned writing was not registered.

In view of the aforementioned fact, the judgments and

decrees rendered by the Courts below do not warrant interference as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 18, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No