

RSA-3838-2016 (O&M)

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

**RSA-3838-2016 (O&M)
Date of decision : 13.12.2018**

Sheela Devi

... Appellant

Versus

Nand Kishore

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Randhir S. Hooda, Advocate
for the appellant.

AMIT RAWAL, J.

The appellant-plaintiff has not been successful in claiming the declaration and recovery of possession in respect of the suit property i.e. shop described with letters A,B,C,D in the site plan, alleged to have been purchased by her father, Chiranji Lal, vide sale deed dated 26.04.1957, from previous owner-Natthi Ram s/o Mauzi Ram, resident of Hodal.

It was alleged that there was a mutual partition, whereby the shop shown in eastern side of the site plan was allotted to the brother of the plaintiff and shop in dispute to the plaintiff. The defendant on 16.04.1976 was inducted as a licensee and on revocation, sought the possession by claiming declaration as owner, along with mense profits @ ₹300/- per month along with interest @12%.

The defendant opposed the suit by alleging that the suit was to be an act of collusion with her sister and brother as in the earlier round of

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litigation initiated before the Rent Controller, it was decided that the title did not vest with Chiranjit Lal. Reliance was laid to the decision dated 20.10.2008 rendered in Civil Suit No.811 of 2003 titled as **“Kamlesh V/s Ved Prakash”**. The ownership of the shop in khasra No.649 min was claimed on the basis of the sale deed dated 28.07.1986.

Learned counsel for the appellant-plaintiff submitted that the respondent-defendant failed to bring on record the sale deed or any document to establish the title with regard to the shop in Khasra No.649. The previous round of litigation would not be having a binding effect upon the plaintiff in the absence of being party. The finding of the Rent Controller qua title was set aside by this Court and the question of title was left open to be decided before the competent court. The site plan brought on record is in tandem with the description of the boundary of the sale deed dated 26.04.1957, therefore, there is abdication, much less, illegality and perversity.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Hooda, for, the plaintiff miserably failed to prove the ownership of the shop in the hands of predecessors-in-interest i.e. vendor, namely, Natthi Ram. In such circumstances, reference of the boundary in tandem with the site plan would be meaningless. It is a settled law that a person, who seeks declaration of ownership, has to establish that his previous vendor was the owner and in the absence of reference to cross-examination, the title of the vendor would be no avail. It is also a matter of record that in the litigation amongst the sister and brother of the plaintiff in Civil Suit No.811 of 2003, the title of the aforementioned shop was not

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decided. The plaintiff did not disclose khasra number, on which the shop was allegedly raised. All these factors weighed in the mind of the Courts below while declining relief sought.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

13.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**