

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

**RSA No.2474 of 2015 (O&M)
Date of decision:30.10.2018**

Gulshan Lal

... Appellant

Vs.

Ajay Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dalip Kumar Tuteja, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.16592-C of 2018

Allowed as prayed for. Accompanying Annexure A-2 is taken
on record.

C.M.No.16599-C of 2018

Allowed as prayed for. Accompanying amended memo of
parties is taken on record.

C.M.No.775-C of 2018

The application is allowed, subject to all just exceptions. Legal
representatives of appellant-Gulshan Lal as mentioned in the application are
ordered to be brought on record for the purpose of prosecuting the present
appeal.

RSA No.2474 of 2015 (O&M)

The appellant-defendant is aggrieved of the judgments and
decrees rendered by the both the Courts below, whereby, suit of the

respondent-plaintiff seeking injunction has been partly decreed restraining the defendant from alienating the suit property to the extent of share of plaintiff.

The respondent-plaintiff instituted the suit claiming right in the property on the basis of the decree dated 14.11.1990 rendered in civil suit no.758 of 1990, whereas, the defendant had been extending threat of interference, therefore, injunction was sought.

The suit was contested by the defendant on the premise that the suit property was in exclusive ownership of the appellant-defendant in lieu of the decree dated 23.07.1987 suffered by father Ram Rang and the construction thereon had been raised after obtaining the loan from the bank. Even the counter claim claiming to be owner in the suit property was filed by challenging the decree dated 14.11.1990. It is in these circumstances, the appellant is before this Court.

Mr. Dalip Kumar Tuteja, learned counsel appearing on behalf of the appellant-defendant submitted that plaintiff miserably failed to prove the genuineness of the decree dated 14.11.1990 as it was clear cut case of the defendant that he did not appear in the decree and it was a case of impersonation. Neither any advocate nor any written statement purported to have been filed by the appellant, has seen the light of the day. Even the decree created the right for the first time as the respondent-plaintiff did not have the pre-existing right required registration, though this plea cannot be taken but being legal plea can always be taken at any stage. All these factors led to irresistible conclusion that the judgment and decree granting

the injunction is not sustainable in the eyes of law.

I am afraid the aforementioned arguments are not sustainable, for, the appellant-defendant being counter claimant had the liability to discharge the onus to prove the impersonification. No attempt had been made to summon the record to prove the signatures in the written statement in suit no.758 of 1990. Perhaps, he was afraid that truth may not surface. The onus always lies upon the person who asserts and then shifts for the purpose of rebuttal. In the absence of discharge, question of rebuttal does not arise. It is innocuous decree of injunction restraining the appellant from interfering as well as to sell the property. The remedy, in these circumstances would be only to claim separate possession in an independent proceedings.

No ground for interference is made out in the impugned judgments and decrees, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 30, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No