

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4009 of 2016 (O&M)

Date of Decision: November 29, 2018

Roopan (deceased) through L.Rs

...Appellant

Versus

Mahender & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rakesh Kumar Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.10344-C of 2016

Prayer in the application is for impleading the legal heirs of appellant Siri Ram, who is stated to have died on 25.10.2012. The application is supported by an affidavit.

Allowed subject to all just exceptions. Persons mentioned in Para 3 of the application are impleaded as legal heirs of appellant Siri Ram for the purpose of prosecuting the present appeal only.

Appellant-plaintiff has not been successful in claiming injunction against the defendants qua forcible interference in his peaceful possession by relying upon the sale deeds dated 19.06.1981 and 15.07.1991. It was, thus, pleaded that the defendants intended to demolish the house constructed in the property as shown with letters ABCDE in the site plan.

The defendants opposed the claim of the plaintiff by denying the sale deeds in his favour, which were asserted to be illegal and fictitious.

On the preponderance of the evidence, the plaintiff was not

successful in claiming the injunction and also failed before the Lower Appellate Court.

Mr.Rakesh Kumar Sharma, learned counsel appearing on behalf of the appellant-plaintiff submitted that the statement of DW-5 Mahender Singh-defendant No.1 and the report of the Local Commissioner Ex.P3 were not adverted to in correct perspective as it clinched the controversy in issue. The suit, in such circumstances, would not have been dismissed. The report of the Local Commissioner also revealed that the defendants had raised fresh construction, though the property was not referred to, but the Lower Appellate Court misinterpreted the same.

I am afraid that the aforementioned argument is not sustainable, for, the best possible evidence in order to claim injunction in view of the stand taken by the defendants was to get the area demarcated vis-a-vis the description given in the title/sale deeds of the plaintiff. In the absence of the same, existence of the property remained in dispute.

For the reasons stated above, I do not find any illegality or perversity in the concurrent findings of fact and law, which are based on appreciation of evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on merits as well as on delay.

November 29, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No