

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

RSA No.4471 of 2016 (O&M)

Date of decision:22.05.2018

Mahabir Singh

... Appellant

Vs.

Sunita (since deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Giri, Advocate
for the appellant.

Mr. Jitender S. Chahal, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-defendant is in Regular Second Appeal aggrieved against the judgment and decree dated 01.12.2015 rendered by the Additional District Judge, Sonapat, whereby, the appeal was allowed and the findings rendered by the Civil Judge (Junior Division), Sonapat, vide judgment and decree dated 20.03.2013 dismissing the suit of the respondent-plaintiff seeking relief of permanent injunction restraining the defendants from interfering into the ownership and possession of the plaintiff in the plot and building, were reversed.

The respondent-plaintiff instituted the suit for permanent injunction on the premise that she was owner in possession of the building constructed over plot no.29 measuring 871 square yards. It was further averred that ownership of the husband of plaintiff through Civil Court

decree in Civil Suit No.333 of 1992 was decided on 10.06.1992. Thereafter, Jagbir Singh, beneficiary of the aforementioned Court decree executed release deed dated 24.09.2008 in favour of the defendant. The defendant being brother in law of plaintiff had no concern with the suit property but he tried to construct some partition wall at the spot which gave cause of action to file the suit on 07.01.2010.

Mr. Ashok Giri, learned counsel appearing on behalf of the appellant-defendant submits that suit was contested by the appellant-defendant with regard to maintainability, for, decree was bad in law as the property at the hands of Deep Chand was ancestral and therefore, it could not have binding affect, for, release deed of 2008 was meaningless as Jagbir Singh had executed a decree in his favour but the Lower Appellate Court without noticing the aforementioned facts allowed the appeal by commenting upon the ownership of the property which was not subject matter of the suit, for, it was simpliciter suit for injunction. The findings of ownership in favour of the plaintiff, therefore, could not have been rendered for no rhyme or reason and could be treated as obiter.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Giri, for, defendant in cross-examination as noticed by the Lower Appellate Court being the last Court of facts and law admitted the possession of the plaintiff. Admission is the best piece of evidence vis-a-vis possession. The argument of Mr. Giri, with regard to admission qua nature and character of the

property is wholly misplaced, for, appellant-defendant has not set up any counter claim challenging the decree of 1992 in favour of husband of plaintiff, i.e., brother of appellant-defendant, for, Deep Chand was not owner of the property. All these factors have been considered by the Lower Appellate Court in correct perspective.

As an upshot of my findings, I do not find any illegality and perversity in the judgment and decree of the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2018
savita

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