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

**RSA-5938-2016 (O&M)
Date of decision : 07.02.2018**

Satish Kumar

... Appellant(s)

Versus

Mam Chand

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Kumar Jain, Advocate
for the appellant.

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit seeking injunction against the defendant from forcible dispossession and interference in the suit property i.e. Rectangle No.77 Killa No.22/1 , has been dismissed by both the Courts below.

Learned counsel appearing on behalf of the appellant-plaintiff submits that both the Courts below have committed illegality and perversity, much less, misread the statement of defendant, who categorically admitted that the colony was carved out in the year 1973 and on the plot purchased by the defendant from the plaintiff, the construction has already been raised, therefore, the injunction as sought was liable to be granted. Withdrawal of the suit against defendant No.2 during the pendency of the suit knowing that

defendant No.2 had raised the construction, was meaningless. The Courts below have ignored the aforementioned piece of evidence, in essence, the plaintiff had led cogent and direct evidence to prove the case by discharging the onus as enshrined under Section 101 of the Indian Evidence Act. Ex.P-1, Ex.PX, Ex.PY, Ex.PZ, Ex.PW2/D, PW4/A are the documents proving the case of the plaintiff, but there is no reference to the aforementioned documents, thus, urges this Court for setting aside the findings under challenge.

Learned counsel for the respondent(s)-defendant(s) submits that both the Courts below have categorically held that the plaintiff had not approached the Court with clean hand and concealed the factum as he had carved the colony and sold the plots. Under the garb of injunction, he wanted to take possession of the plot owing to the increase in the price of the property. The best possible evidence has been withheld and therefore, the onus has not been discharged, thus, urges this Court for dismissal of the appeal by upholding the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Jain, for, the best possible evidence, which has been withheld, was the demarcation report to prove whether there was an attempt made by the defendant, who had been owner of the property of Rectangle No.77 Killa No.22/1, even if, he admitted that he had raised the construction, but I cannot remain unmindful of the fact that the plaintiff for proving the case has to stand on his own legs. Having failed to discharge the onus, rightly so, the Courts below have dismissed the suit, for, the plaintiff knew that the defendant, who had already raised the construction prior to

filing of the suit, yet sought the injunction, but during the pendency of the same, withdrew it. In my view, it is a serious attempt, which I do not delve further, as it seriously prejudice the right of the plaintiff.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the present regular second appeal is dismissed.

07.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No