

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

RSA No.5070 of 2015 (O&M)

Date of decision: 28.02.2018

Ramesh Kumar and others

... Appellants

Versus

M/s Ram Kishan Dass Om Parkash and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Arvind Bansal, Advocate
for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal has been directed against consistent findings recorded by the Courts below whereby suit filed by M/s Ram Kishan Dass and others respondents/plaintiffs restraining the appellants/defendants from raising any construction over the suit property detailed in para 1 of the plaint and prayer for grant of mandatory injunction to direct them to remove the malba from the suit property was decreed by the trial Court and findings recorded by the trial Court have been affirmed in appeal.

The sole submission made by counsel for the appellants is that as the trial Court in para 16 of the judgment has even decided the question

of ownership of the phar existing in front of shops of the respondents/plaintiffs as well as shop No.49 in Old Anaj Mandi, Kaithal owned by the appellants/defendants having been purchased from Bhim Sain son of Girdhari Lal who purchased the same from Satpal, a serious prejudice shall be caused to the appellants in case findings recorded in para 16 of the judgment by the trial Court are allowed to sustain.

I have heard counsel for the appellants, perused the judgments passed by the Courts below but find that the appeal is devoid of merit and deserves to be rejected.

The trial Court in para 16 has held that plea of defendants No.1 to 4 that they are owners of the platform situated in front of shop No.49 is without any merit because the Market Committee, Kaithal is owner of this property. Recital in sale deed Ex.D2 of defendants No.1 to 4 qua the suit property i.e. phar is pertaining to use of phar and in no way vests ownership of the phar in favour of defendants No.1 to 4. Counsel for the appellants has failed to point out if in the sale deed executed in favour of the appellants/defendants, ownership rights qua the phar (open space) are bestowed upon the appellants/defendants. He has also failed to point out any such recital in the sale deed executed in favour of their vendor by the previous owner much less as to how the previous owner became owner of any part of the phar/open space in front of shop No.49. In this view of the matter, contention raised by counsel for the appellants is not tenable.

For the foregoing reasons, the appeal fails and is accordingly

dismissed in limine.

No order as to costs.

28.02.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No