

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

RSA No.2397 of 2017 (O&M)

Date of decision:01.11.2018

Balwinder Singh

... Appellant

Vs.

Sohan Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Anjali Khosla, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been successful to defend the suit for injunction filed by the respondent-plaintiff seeking restraint order of forcible interference and dispossession. The plaintiff claimed that he was owner of the suit property and had been residing in some other property at Dera Bassi but was regularly visiting the suit property. But when defendant tried to open the door through the wall of the house of the plaintiff, therefore, cause of action arose to file the suit.

The defendant admitted the ownership and initial possession of the plaintiff but alleged that plaintiff had entered into an agreement to sell dated 19.02.2004 with one Kewal Dass and Bachan Dass, who further agreed to sell to the defendant, vide agreement dated 12.02.2005, and defendant was put in possession.

On preponderance of the evidence, the trial Court decreed the suit by restraining the appellant-defendant and the appeal filed before the Lower Appellate Court also met with the same fate.

Learned counsel appearing on behalf of the appellant-defendant submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law as the electricity bills sought to be placed on record by way of an additional evidence under Order 41 Rule 27 of Code of Civil Procedure showed that the same were in the name of his client but the same was also declined by the Lower Appellate Court and therefore, an application for additional evidence has been filed before this Court. It was the appellant-defendant who was liable to protect the possession as per the provisions of Section 53-A of the Transfer of Property Act. The plaintiff very conveniently denied to have executed the agreement to sell dated 19.02.2004, though as per the instructions no suit for specific performance has been filed.

I am afraid the aforementioned arguments are not sustainable in the eyes of law, for, the factum of possession and ownership initially with the plaintiff was admitted. The onus heavily shifted upon the defendant that by virtue of the agreement to sell, *ibid*, possession was passed on to him. No effort was made to prove the signatures of the plaintiff on the agreement to sell dated 19.02.2004. The agreement to sell does not confer any title. The electricity bill is of 2011, thus, post filing of the suit, therefore, it cannot be looked into. Both the Courts below have rightly restrained the defendant in causing the interference. The remedy, if any, for the appellant was to claim

specific performance of the agreement to sell, if permissible in law.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge 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.

Resultantly, the appeal is dismissed.

	(AMIT RAWAL) JUDGE
November 01, 2018	
savita	
Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No