

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

**RSA No.28 of 2017 (O&M)
Date of Decision.29.08.2018**

Mahipal

.....Appellant

Vs

Prempal and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.P. Sharma, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff No.2 has not been successful in defending the judgment and decree rendered by the trial Court in decreeing the suit before the lower Appellate Court, in essence, appeal laid before the lower Appellate Court by the defendants was allowed and the suit of plaintiffs was dismissed.

The plaintiffs instituted the suit seeking injunction against the respondents-defendants qua forcible interference and dispossession in respect of the suit property on the premise that the plaintiffs had been put into possession by virtue of a writing dated 18.10.2005.

The defendants contested the suit disputing the possession of the plaintiffs, much less, the writing and a counter-claim was also set up by defendant No.3 that on the basis of agreement to sell dated 28.12.2007 executed by defendant Nos.1 and 2, injunction may be granted against the plaintiffs from interfering into his peaceful possession as he had been put into possession.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are owners in possession of disputed property as alleged? OPP.*
- 2. Whether the defendant No.3 is owner in possession of disputed property on the basis of agreement to sell dated 28.12.2007? OPD*
- 3. Whether the suit of the plaintiffs is not maintainable? OPD.*
- 4. Whether the plaintiffs have no cause of action to file the present suit? OPD*
- 5. Whether the plaintiffs be estopped from filing the suit by their own act and conduct? OPD*
- 6. Whether the plaintiffs have not affixed proper court fee on the plaint? OPD*
- 7. Whether the defendant is entitled for special cost under Section 35-A of CPC? OPD*
- 8. Relief.”*

The plaintiff examined Mahipal as PW1 and tendered into evidence document Mark A to Mark C.

On the other hand, defendants examined Dharampal as DW1, Madha Ram as DW2, Jogender Singh, Draftsman as DW3, Rakesh as DW4 and Prempal as DW5.

On the preponderance of evidence, the trial Court believing the aforementioned writing, decreed the suit and enjoined the defendants while dismissing the counter-claim. However, in

appeal laid before the lower Appellate Court, the aforementioned judgment and decree, as noticed above, has been set aside.

Mr. J.P. Sharma, learned counsel appearing on behalf of the appellant submitted that the lower Appellate Court has committed illegality and perversity in reversing the judgment and decree of the trial Court, as the writing had not been disputed by the defendants, much less, possession of the plaintiff. In such circumstances, the lower Appellate Court ought not to have reversed the finding of fact arrived at by the trial Court. The defendants had not been able to prove possession by virtue of agreement to sell dated 28.12.2007, thus, there is abdication.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma, for, the aforementioned writing has not been proved in accordance with law, much less, was not reflected in the revenue record establishing any possession. Even otherwise, such writing conferring title in the property having a value of more than ₹ 100/- requires registration. The revenue record has been withheld from the Court to establish the conscious possession of the plaintiff.

The plaintiff miserably failed to discharge the onus as per Section 101 of the Indian Evidence Act. Therefore, I am of the view that the lower Appellate Court being the last court of fact and law rightly dismissed the suit and decreed the counter claim. The arguments of Mr. Sharma have not been able to bring the case within the realm of illegality and perversity to enable this Court to form a different opinion than the one already arrived at by the lower

Appellate Court. No ground for interference is made out, much less, no substantial question of law arises for determination by this Court.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether reportable No