

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

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RSA No.4236 of 2017(O & M)
Date of Decision:10.01.2018

Vijay Pal

...Appellant

Versus

Budh Singh @ Braham Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vibhav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

Mr. Tanmoy Gupta, Advocate
for the caveator-respondent.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned Additional District Judge, Faridabad.

Plaintiff filed a suit for permanent injunction restraining the defendants from interfering in his peaceful possession. Parties to this litigation are related. Plaintiff claims right in the property on the basis of a lease deed dated 17.08.1972, whereas the defendant claimed the property on the basis of a sale deed executed in their favour on the same day i.e. 17.08.1972. It is the case of the defendant that lease deed was executed in favour of the father of the plaintiff-Jagmal to avoid any right of pre-emption being exercised by other co-owners of the vendors. Both the documents were executed on the same day. Learned trial Court decreed the suit, whereas the learned First Appellate Court has reversed the findings after appreciating the evidence available on the file.

Learned First Appellate Court has given cogent reasons to reverse the finding. The Court has found that Jagmaal, the father of the plaintiff, and defendant-Budh Singh @ Braham Singh were real brothers. In those days

right of pre-emption was available to the co-owners/co-sharers. Hence

vendor/owner of the property has made to execute two documents; one lease deed for a period of 99 years in favour of Jagmal, father of the plaintiff and other sale deed in favour of Hari Dass and Raju, other brothers.

The learned First Appellate Court has also recorded a finding that the plaintiff failed to produce on record any evidence to prove that he had ever paid the lease money either to the vendor of the defendant or the defendant. The learned First Appellate Court further recorded a finding that the plaintiff failed to produce any evidence on record to prove that he had constructed 6 shops and a stall, which have been constructed at the site. Learned First Appellate Court has further considered evidence available on the file proving that the shops were being leased out by the defendant and the plaintiff had nothing to do with the same.

The learned First Appellate Court has further considered the evidence of Nambardar and other witnesses, who have deposed that the defendants had got constructed the shops and thereafter leased out.

I have repeatedly called upon the learned counsel for the appellant to point out any error in the judgment passed by the learned First Appellate Court. He failed to point out any error.

There is finding of fact arrived at by the learned First Appellate Court on appreciation of evidence, which is not shown to be either erroneous or result of misreading of evidence.

In view thereof, there is no scope for interference.

Regular second appeal is dismissed.

10.01.2018
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(ANIL KSHETARPAL)
JUDGE

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