

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

RSA No.793 of 2017 (O&M)
Date of Decision : 16.10.2018

Kimti Lal

..... Appellant

Vs.

Ashwani Kumar

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Vivek Suri, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower Appellate Court reversing that of the trial Court and thereby decreeing a suit filed by the respondent.

The respondent had claimed that the property in dispute was part of *gali* and the appellant be restrained from encroaching thereon.

The case of the appellant on the other hand was that the property in dispute was his personal property and he had made a chabootra thereon. The trial Court dismissed the suit but the lower Appellate Court having allowed the appeal the appellant is before this Court.

Learned counsel for the appellant has argued that the lower Appellate Court has wrongly appreciated the evidence. On perusal of the judgment of the lower Appellate Court it is revealed that the lower

Appellate Court has considered all the evidence which has been led by both the parties.

Learned counsel for the appellant has not been able to show me which piece of evidence has not been considered by the Courts below. On a consideration of the entire evidence the Court below has held it to be more probable that the property in dispute is not the personal property of the appellant because even as per the case of the appellant at one stage an agreement had taken place between his father and the father of the respondent that though the appellant would be able to use the property for his domestic purposes yet he would never be able to cover the same. If the property had belonged to the appellant, there was no question of his having agreed to such terms and to my mind this tilts the preponderance of probability in favour of the respondent.

Learned counsel for the appellant has not been able to show how these findings are so perverse or based on no evidence as to render them liable for interference in second appeal.

Appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

16.10.2018

pooja sharma-I

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No