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

RSA No. 2069 of 2019 (O&M)
Date of Decision: 16.08.2019

Jasmail Singh

-Appellant

Vs

Maingal Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Sonia G. Singh Samber, Advocate,
for the appellant.

RAJ MOHAN SINGH, J.

CM No.5643-C-2019

For the reasons mentioned in the application, delay
of 13 days in re-filing the present appeal is condoned.

Application stands disposed of.

Main case

1. Plaintiff has preferred this Regular Second Appeal
against judgments and decrees passed by both the Courts
below, dismissing the suit for mandatory injunction concurrently.

2. Perusal of the record would show that it is a case of
no evidence on behalf of the appellant-plaintiff. After framing of
issues on 24.04.2015, effective opportunities were given to both
the parties to lead their evidence.

3. Plaintiff could not lead any evidence on record despite last opportunity granted to him, subject to payment of cost(s). Plaintiff did not avail opportunity for leading any evidence. Resultantly, evidence of the plaintiff was closed by order of the Court on 05.07.2015.

4. Defendant had led evidence in support of his case. Since the initial onus was on the plaintiff to prove his case, therefore, in the absence of any evidence led by the plaintiff, the Court had no option but to dismiss the suit forthwith in terms of Order 17 Rule 3 CPC.

5. Plaintiff-appellant has also preferred CM No.9751-C of 2019 under Order 41 Rule 27 CPC for leading additional evidence in the form of judgment and decree dated 14.12.2016 passed by Civil Judge (Junior Division), Jagraon in **Civil Suit No.73 titled 'Maingal Singh vs Jasmail Singh'**. The said suit was filed by Maingal Singh i.e. the present respondent for permanent injunction restraining the defendant i.e. the present appellant from interfering in the peaceful possession of Maingal Singh over the property measuring 4K-3-1/3M.

6. The said suit was dismissed by Civil Judge (Junior Division), Jagraon vide judgment and decree dated 14.12.2016 on the premise that the then plaintiff Maingal Singh had claimed possession over the suit property being owner on the basis of

two sale deeds dated 06.01.1998 and 06.10.1997. The said sale deeds were proved on record as Ex.P11 and Ex.P17 respectively. The Court proceeded to record findings that the sale deed dated 06.01.1998 (Ex.P11) was in respect of land measuring 3-1/3M out of 4 Kanals purchased by the plaintiff in the said suit i.e. Maingal Singh in Khata No.128/133, Mustil No.70, Killa No.10/2/3, 11/1/1, 11/1/13 as per jamabandi for the year 1991-92 situated in the revenue estate of village Sudhar.

7. Similarly, as per sale deed dated 06.10.1997 (Ex.P17), the then plaintiff had purchased 5M-8 Sarsai of land from the defendant Jasmail Singh out of total 4 Kanals of land. The computation of the area so purchased by the plaintiff of the said suit did not correspond to the total land for which suit for permanent injunction was filed by the plaintiff. On that premise, the suit was dismissed as the plaintiff could not show his ownership and possession over whole of the suit property.

8. The aforesaid proposed additional evidence was not in respect of any rasta allegedly left by the parties. The subject matter of earlier suit was in respect of the land purchased by the present respondent for which permanent injunction was sought.

9. Dismissal of the suit in no way would answer the present *lis* wherein the plaintiff-appellant could not lead any evidence in a suit for mandatory injunction.

10. No law point worth cognizance of this Court is involved in the present appeal nor the proposed additional evidence would advance the case of the plaintiff-appellant in any manner.

11. In view of aforesaid, I find no justification to interfere in this Regular Second Appeal as well as in the application for additional evidence.

12. The Regular Second Appeal and the application under Order 41 Rule 27 CPC are resultantly, dismissed.

16.08.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No