

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

**RSA No.1415 of 2016 (O&M)
Date of Decision.11.01.2019**

Prehlad Singh and another

...Appellants

Vs

Purshottam and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.P. Bhandari, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.3928-C of 2016

For the reasons stated in the application, delay of 1 day in
filing of the appeal is condoned.

Application is allowed.

RSA No.1415 of 2016

The present appeal is directed against the concurrent
finding of fact whereby the suit of the appellants-plaintiffs for
declaration with consequential relief of permanent and mandatory
injunction has been dismissed.

The plaintiff sought aforementioned relief on account of
ownership through tenants including defendants. It was alleged that
possession was handed over to Sohan Lal. One Ali Asgar son of
Ahmad Ali mortgaged two shops to Nanak Ram & Sohan Lal sons of
Rattan Lal for a total sale consideration of ₹500/- along with
possession. There was a compromise on 12.10.1951 between the
predecessors of the parties to the *lis* but defendants wanted to violate
the compromise and in such circumstances, sought retention of

possession through intervention of the Court.

Defendants opposed the suit by raising objection qua maintainability and applicability of provisions of Order 2 Rule 2, much less, Order 23 Rule 3 CPC. It was asserted that plaintiffs had no right, title and interest in the property. The factum of selling of property vide sale deed dated 5.2.1938 by Hafij Nizammudin and other averments regarding mortgage and tenancy were denied.

The trial Court dismissed the suit and affirmed by the lower Appellate Court.

Mr. Bhandari, learned counsel appearing on behalf of the appellants submitted that the finding of fact and law arrived at by the Courts below is not sustainable in the eyes of law. There is gross abdication and perversity. The finding is contrary to record as no issues were framed. Since no finding on issues is given, doctrine akin to *res judicata* would not have been a source of consideration. Father of the plaintiff No.1 and grand father of the plaintiff No.2 gave two shops to father of defendants No.5 and 6 in compromise which took place on 12.10.1951 in lieu of service to maintain a nali, which was not considered. Since defendants deliberately violated the compromise, therefore, cause of action accrued. Pedigree table of Ali Asgar revealing two sons was wrong, thus, provisions of Section 114 of the Indian Evidence Act were liable to be attracted.

I am afraid aforementioned argument is not sustainable in the eyes of law, as the plaintiffs miserably failed to prove pleadings referred to in the plaint. Compromise Ex.P16 and P17 could not have been challenged in independent suit, in view of the provisions of Order

23 Rule 3 and Order 2 Rule 2 CPC. The plaintiffs attempted to include all possible pleas, which could not have been adjudicated, in view of express bar as per provisions of law referred to above.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 11, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No