

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

**RSA No.3909 of 2013 (O&M)  
Date of Decision.30.04.2019**

Prem Nath

...Appellant

Vs

Durgiana Committee, Amritsar and others

..Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Tarundeep Kumar, Advocate  
for the appellant.

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**AMIT RAWAL J. (ORAL)**

**C.M. No.4637-C of 2019**

For the reasons stated in the application, order passed by this Court on 07.03.2019 is recalled and the appeal is restored to its original number.

Application is allowed.

**RSA No.3909 of 2013**

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff seeking declaration of being owner of Khoo Manu Mishar built on Khasra No.591 min, measuring 12 marlas along with passage by easement has been dismissed by the trial Court and affirmed in appeal.

The appellant-plaintiff alleged that in December, 1984, defendant No.1 raised an illegal wall on the Southern side of the suit property and he and his brother filed suit for declaration being legal owners with mandatory injunction for direction for demolition and the suit was decreed vide judgment and decree dated 23.12.1993. Since the entire relief was not granted, therefore, appeal was filed which was

dismissed by the Appellate Court on 7.5.1998. Defendant No.1 also filed appeal against the judgment and decree but no regular second appeal was filed. Defendant No.2 to 4 had stolen tin sheets and other articles of the plaintiff but no action was taken by the police despite repeated complaints. Even the electricity connection was also obtained by the defendants.

Defendant No.1 in the written statement raised objection of mis-joinder and non-joinder and that alleged property was purchased by defendant No.1 from Union of India vide registered sale deed in April, 1943 and since then they had been in possession. The earlier suit was on the basis of some false allegations. Electric connection was in favour of defendant No.1. No threats have ever been extended to the plaintiff for dispossession.

Defendant No.5 filed separate written statement and stated that the electric connection in the disputed property was running in the name of Trust Khuh Manu Mishar, which was disconnected on the request of plaintiff. The second connection was also disconnected by the Punjab State Electricity Board on account of non payment of bill.

Plaintiff examined himself and two other witnesses whereas defendants examined five witnesses.

Mr. Tarundeep Kumar, learned counsel appearing on behalf of the appellant submitted that judgments and decrees of both the Courts below are not sustainable, as it has been established on record that the Trust was owned by the father of the plaintiff, which fact has been acknowledged and reflected in the decree dated 23.12.1993 Ex.PW1/2. As per the law relating to trust property, de

facto trustee in possession of the property in question is the legal owner. Even in execution application, the said judgment and decree was executed and wall raised by the defendants was dismantled. Both the Courts below failed to take into consideration testimony of Babu Lal, SDO (Electricity). In fact, his testimony revealed that Durgiana Committee, defendant No.1 had been using the electricity supply by theft by joining their mandir electric wire in the suit property.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. Plaintiff has miserably failed to prove the contents of trust deed in order to claim relief of declaration. Plaintiff cannot be permitted to indulge in perpetual litigations when earlier litigation had already created estoppel qua non grant of relief. In fact, identity of the property also remained a mystery as submission of site plan cannot be a ground for conferring title upon the plaintiff.

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

**(AMIT RAWAL)**  
**JUDGE**

**April 30, 2019**  
Pankaj\*

Whether Reasoned/Speaking    Yes

Whether Reportable                No