

RSA-2071-2015 (O&M)

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

**RSA-2071-2015 (O&M)
Date of decision : 08.03.2019**

Lajwanti

... Appellant

Versus

Pawan Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Mamli, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-5409-C-2015

For the reasons stated in the application, which is supported by an affidavit, delay of 36 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit for permanent injunction seeking restraint against the defendants from forcible dispossession and interference in respect of constructed house, shop and boundary wall, shown in letters 'ABCD', in the site plan attached with the plaint, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff in support of the evidence established that she was having ration card, voter card of the house and carrying on the business in

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the shop situated in the same very house, but the defendants extended threats to forcibly dispossess, thus, a cause of action accrued to file the suit.

The defendants opposed the suit and denied the possession of the plaintiff. It was alleged that incorrect boundaries were given i.e. on the Southern side, shown the plot of Kartar Singh, whereas it was a Nohra of the answering defendants. Earlier Nohra was in possession of their father and now with them. No wall was existing on the Eastern side of the suit property. The defendants constructed a shop over the property, purchased, vide sale deed dated 01.09.1981, and the plaintiff had no concern with the same.

The plaintiff examined herself as PW1 and brought on record Ex.P1 to Ex.P4 and Mark A to E i.e. photocopies of site plan, voter identity card, ration card, criminal complaint, FIR, death certificate, photographs and application dated 25.05.2010. On the other hand, the defendants examined five witnesses and brought on record Ex.D1 to Ex.D16 and Mark DA to Mark DC i.e. copy of sale deed, ration card, electricity bills etc.

Mr. R.S. Mamli, learned counsel appearing on behalf of the appellant-plaintiff submitted that the defendants, in cross-examination, admitted existence of Nohra on the adjacent land, which tantamount the possession as well. Ration card and voter card, much less, the photographs, are the testimony to the same.

I am afraid the aforementioned argument is not sustainable, for, all the documents have not been proved on record, in accordance with law, except tendered in evidence. The plaintiff failed to discharge the onus as per the provisions of Section 101 of the Indian Evidence Act. It was obligatory upon the plaintiff to examine the neighbours or seek appointment

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of the Local Commissioner, much less, demarcation or the electricity bills. The unclinched evidence brought on record by the defendants totally belied the case of the plaintiff.

As an upshot of my finding, I do not subscribe to the submissions of Mr. R.S. Mamli, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

08.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**