

RSA-3644-2016 (O&M)

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

RSA-3644-2016 (O&M)

Date of decision : 21.01.2019

Manjit Nanda

... Appellant

Versus

Kailasho Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff No.1 is not successful in defending the appeal preferred by the defendants against the judgment and decree of the trial Court, whereby the suit of the plaintiffs for declaration to be owner in possession of the residential house marked by letters 'ABCD' in the site plan and injunction restraining the defendants from interfering into peaceful possession and installation of the electric connection, was decreed.

It was alleged that as per the site plan, on the North side, there was a house of Mangal, South : Ashwani, East : Ashok Kumar and West: Rasta and house of Dhian Chand, situated in Village Lahri Bawian. It was ancestral house belonging to the plaintiffs, since the time of their forefathers and renovated from time to time, even electric connection was also provided. Since the defendants wanted to install electric connection and by denying the ownership of the plaintiffs, cause of action arose to file the suit.

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The defendants opposed the suit by disputing the site plan produced by the plaintiffs. They have valid title and right in respect of the property and the house of the plaintiffs is situated on the north of the house of late Dakho Devi and same bears No.53. As such, dispute is pertaining to H.No.54, which has devolved upon defendant No.2 Kewal Krishan of village Sultan pur by virtue of a Will dated 01.07.2008 executed by Dakho Devi.

In support of the case, the plaintiffs examined Kishan Chand Nanda as PW-1 and Sohan Lal as PW-2 and brought on record various documents, whereas the defendants examined Vishal Inspector of District Food Supply Office as DW-1, Mohinder Pal, Election Clerk as DW-2, Bodh Raj, LDC Sub Division Sarna PSPCL as DW-3, Anju Bala, Panch as DW-4, Kewal Krishan as DW-5, Ramesh Kumar, UDC, PSPCL as DW-6 and Madan Lal as DW-7 and tendered in evidence various documents.

On the basis of the preponderance of evidence, the trial Court decreed the suit by granting declaration and restraining the defendants from installing electric connection. The lower Appellate Court has reversed the findings of the trial Court.

Learned counsel appearing on behalf of the appellant-plaintiff No.1 submitted that the lower Appellate Court being the last Court of fact and law has misinterpreted and misread the statement of PW-2 Sohan Lal as he never stated that there was a common courtyard or existence of house of Dakho Devi, adjacent to the house of the plaintiffs. The site plan (Ex.P1) did not reflect the existence of common courtyard. The defendants have failed to rebut the evidence regarding the possession as Sarpanch examined as DW4, did not dispute the possession of the plaintiffs. Since there was no

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document of title, owing to the existence and location of the house in *Lal Lakeer/Lal Dora*, the lower Appellate Court ought not to have set aside the decree of declaration and could have confined to the possessory rights. The defendants, under the garb of courtyard, cannot install the electric connection on the front house belonging to the plaintiffs, thus, there is abdication.

I have heard learned counsel for the appellant-plaintiff No.1, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sarju Puri, for, Voter Register brought on record showed that Dakho Devi was resident of house No.54 and the plaintiff of 53. Both the houses are adjacent, whereas the trial Court noticed that the defendants failed to establish the existence of house No.54. The aforementioned findings, thus, of the trial Court is totally against the documentary evidence.

As regards the injunction, electric connection had already been installed. There is no relief of mandatory injunction for removal of the same. Be that as it may, the electric connection has been provided after verifying the documents and possession of the defendants. The plaintiffs have miserably failed to prove the demarcation report to show that the meter was installed on his wall and not on the defendants. The lower Appellate Court, in my view, while allowing the appeal may have looked from the angle of possessory right instead of declaration.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Sarju Puri, to form a different opinion than the one

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already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

21.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**