

RSA-5661-2016 (O&M)

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

**RSA-5661-2016 (O&M)
Date of decision : 26.04.2019**

Aditya Sharma

... Appellant

Versus

Ashok Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Sharma, appellant in person.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit for declaration claiming to be owner in possession of the house with a consequential relief of injunction, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff-Aditya Sharma, who is present in Court in person, filed the a civil suit to be owner in possession of the suit property, where the electric meter was installed in the name of one Mange Ram, relative of the father of the plaintiff and the defendants did not have any right and interest in the property. He was an Expert Mechanic of PVC Industry and had been traveling throughout the country and defendant Nos.1 and 2 with an intention to grab the property, threatened to dispossess, therefore, the cause of action accrued to file the suit, even he requested defendant No.1 to deposit the house tax with the municipal committee in good faith, but the same was deposited in his name, instead of the plaintiff.

The defendants opposed the suit and stated that one Rameshwar Dass was the owner of the property and after his death, Nihal Chand, became the owner and thereafter, Ashok Kumar-defendant No.1 had

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inherited the property and prior to that, Kapoor Chand son of Lala Zorawar Singh, who sold it to Lala Puran Parshad, was owner of the property. Ashok Kumar, vide registered gift deed dated 22.10.2017, gifted the property to defendant No.2.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiff is entitled to decree for mandatory as well as permanent injunction as prayed for? OPP*
- 2. Whether the defendant No.2 is the absolute owner of the suit property and the plaintiff has no concern with the property? OPD*
- 3. Whether the plaintiff has no locus standi to file the present suit? OPP*
- 4. Relief.*

The plaintiff in support of the pleadings examined five witnesses and tendered in evidence Ex.P1 to Ex.P6 and Ex.PX, whereas the defendants examined six witnesses and brought on record Ex.D1, Ex.D3, Ex.R1 to Ex.R6.

Mr. Aditya Sharma, the appellant in person, submitted that suit property was 200 years' old Muslim Hawalat falling in Khasra No.3310, which had already been grabbed by the persons, who were looking after the same. Their real status was of refugee. The documents of ownership with regard to the property, in dispute, were lost and police report dated 12.05.11 (Ex.P2) was made on 06.07.07. No certified copy of the document was found in the record of Tehsil, Rohtak and this fact was proved on 25.01.2012, through Krishan Kumar, Patwari Rohtak. The receipt dated 22.10.2011 (Ex.PX) proved the payment of House tax as ₹190/, whereas the

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defendant No.2 had produced the receipt Ex.D3, dated 31.05.2012 to the tune of ₹336/- of house No.845 and 846-A, which had no concern with the suit property. Ex.R3 to Ex.R6 are the certified copies of certain photographs, produced before the Executive Magistrate, but neither the original nor negatives have been produced on record. Both the Courts below have abdicated in not appreciating the aforesaid facts, thus, urges this Court for setting aside the judgments and decrees, under challenge.

I am afraid the aforesaid arguments are not sustainable as the plaintiff miserably failed to discharge the owner qua the ownership of the property, which is required to be discharged as per Section 101 of the Indian Evidence Act. No permission or any application under Section 65 of the Indian Evidence Act, for leading secondary evidence, has been filed. Even if, the defendants had during the stage of the pleadings, disclosed the registered gift deed (Ex.D2), it was obligatory upon the plaintiff to challenge the same by way of amendment in the suit as the registered document is required to be assailed in accordance with law.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees, under challenge, much less, no substantial question of law arises for determination. No ground is made out for interference. Accordingly, the present second appeal is dismissed.

26.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No