

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

**RSA No.1750 of 2014 (O&M)
Date of Decision:21.02.2019**

Laxmi Devi

....Appellant

Versus

Purshottam and others

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anurag Jain, Advocate for the appellant.

ANIL KSHETARPAL, J.(ORAL)

Appellant is in the regular second appeal against the judgement passed by the learned First Appellate Court.

Plaintiff filed a suit for permanent injunction claiming that he is owner in possession of 59 Kanal 5 Marla of land and defendants be restrained from interfering in her possession. Defendants contested the suit by pleading that the plaintiff is not in possession. As noticed above, learned First Appellate Court reverse the judgement on the following ground:-

1. Judgement and decree dated 05.03.2005 on the basis where of the plaintiff claim to be owner in possession has not been produced.
2. There is no evidence of delivery of possession to the plaintiff.
3. General power of attorney was executed by the plaintiff in favour of her brother Suresh Kumar in the year 1991, whereas plaintiff acquired title in the year 2005, therefore, the aforesaid attorney cannot be used in the present suit.
This court has heard learned counsel for the appellant as

defendants-respondents have not appeared in spite of service. Application for permission to the additional evidence has also been filed, in order to produce judgement and decree dated 5.3.2005 as also a fresh registered

general power of attorney dated 13.05.2011.

The prima facie examination of the aforesaid documents would prove that Rohit Jain was owner of the suit property who had exchanged ownership and possession with the plaintiff-appellant.

Keeping in view the application for additional evidence and also noticing the fact that the defendants have not chosen to appear, this Court is of the opinion that the additional evidence which goes to the root of the case, would help the Court in doing substantive justice, deserves to be allowed.

Since fresh general power of attorney is required to be proved, therefore, plaintiff would be required to lead evidence.

Keeping in view the additional evidence which has been produced is required to be proved, the judgement passed by the learned First Appellate Court is set aside.

Case is remitted back to the First Appellate Court to re-decide the appeal afresh after granting opportunity to all the parties to lead evidence in support of their case.

This order has been passed in order to do substantive justice. First Appellate Court would also issue notice to the contesting defendants.

Appellant through its counsel is directed to appear before the First Appellate Court on 12.03.2019.

The regular second appeal is disposed of.

(ANIL KSHETARPAL)
JUDGE

21.02.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No