

**RSA-1739-2017 (O&M)**

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

**RSA-1739-2017 (O&M)  
Date of decision : 16.05.2019**

Sapattar Singh (deceased) through LRs

... Appellant

Versus

Abbas Ali and another

... Respondents

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

Present: Mr. Ashok Kumar Khubbar, Advocate  
for the appellant.

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**AMIT RAWAL, J. (ORAL)**

**CM-4176-C-2017**

For the reasons stated in the application, which is supported by an affidavit, delay of 77 days in filing the appeal is condoned.

CM stands disposed of.

**MAIN CASE**

The appellant-plaintiff have not been successful in seeking injunction against the defendants from blocking and closing the main entrance/gate marked by letters 'AB' of the house of the plaintiff measuring 79'x89' ft., marked by letter 'CDEFG', shown in the site plan, in respect of house bearing No.30, situated at Village Nagal, Tehsil Jagadhri and District Yamuna Nagar, forcibly and illegally, by alleging himself to be owner in possession of the aforementioned suit property, as per the site plan and the field book, prepared by the Gram Panchayat. Previously there was a dispute

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between the plaintiff and Abloo etc., regarding Sehan marked by letters 'ACDE' in the site plan, resulting into, filing of the Civil Suit No.245 of 1988 by the plaintiff, which was dismissed, vide judgment and decree dated 26.05.1997. In the appeal filed before the lower Appellate Court, the plaintiff was found to be owner in possession of the property. The regular second appeal preferred before this Court was dismissed.

The defendants opposed the suit and stated that they have been in possession since the time of their forefathers and the construction over the suit property belonged to the defendants and denied the plaintiff to be owner.

The plaintiffs in support of the pleadings examined two witnesses and tendered the site plan as Ex.P1, judgment and decree dated 01.09.2000 as Ex.P2 and Ex.P3, copy of the order passed in RSA by this Court as Ex.P4, copy of field book as Ex.P5 and copy of naksha abadi as Ex.P6. On the other hand, the defendants examined three witnesses and tendered the site plan as Ex.DW3/A Mark A.

Mr. Khubbar, learned counsel appearing on behalf of the appellant-plaintiff submitted that the site plan, in the previous suit as Ex.P4 and Ex.P6 in the present case, is in consonance with the site plan Ex.P1 and not with Ex.DW3/A. The Courts below have erroneously non-suited the plaintiff, not having proved the site plan, but the fact of the matter is that Ex.P6 has not been objected to. In such circumstances, the Courts below could not have ignored the aforementioned document, resulting into, perversity.

I am afraid the aforementioned argument is not sustainable, for, the plaintiff miserably failed to discharge the onus as per the provisions of

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Sections 101 and 102 of the Indian Evidence Act, as the author of the site plan Ex.P1, has not been examined. If at all, there was some dispute viz-a-viz the site plan i.e. Ex.P4 in the previous suit and Ex.DW1/A, in the present suit, nothing prevented the plaintiff to submit an application under Order 26 Rule 9 of the Code of Civil Procedure, for appointment of the Local Commissioner, in such circumstances, the dismissal of the suit was inevitable.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Khubbar, 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.

**16.05.2019**  
Yogesh Sharma

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

Whether speaking/reasoned    **Yes/ No**

Whether Reportable            **Yes/ No**