

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

RSA No.2155 of 2017 (O&M)

Date of decision:24.01.2019

Ramavtar Sharma (since deceased) through LRs ... Appellant

Vs.

Hari Ram Mehta and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Manish Mehta, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.5246-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 150 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.2155 of 2017 (O&M)

The present Regular Second Appeal is directed against the concurrent findings of fact and law, whereby, suit of the appellant-plaintiff for declaration and injunction has been dismissed by the trial Court and affirmed in appeal.

The plaintiff sought the declaration and injunction on the ground that his predecessor-in-interest was allotted the land by the Custodian Department, vide sale certificate no.P/R/1604 and writing dated

15.5.1963 and Special Power of Attorney, Ex.P1, given to the plaintiff, who constructed house, after seeking sanction of the site plan from the concerned Municipal Committee. The entry in record of Municipal Committee was incorrect and defendant no.1 in connivance with the officials tried to interfere.

The defendants opposed the suit by raising objection with regard to identity of the property. It was alleged to be a chowk which was under the ownership of Municipal Committee and this fact had been recorded in the proceedings initiated under Section 133 CPC.

Mr. Manish Mehta, learned counsel appearing on behalf of the appellant-plaintiff submitted that the attorney and writing being more than 30 years old, carried a presumption of truth as per the provisions of Section 90 of Indian Evidence Act. The proceedings under Section 133 Cr.P.C were initiated against the son of the plaintiff, which could not have binding effect. The previous suit for injunction was not decided on merits. The finding of fact and law rendered by the Courts below in the absence of demarcation report was, thus, wholly preposterous.

I am afraid the aforementioned argument is not sustainable as identity of the property in the absence of demarcation report has not been established. It was obligatory upon the plaintiff to discharge the onus to prove that vendor was owner and thus, acquired the ownership in accordance with law. The writing was un-registered document and alleged writing could not have been looked into for want of registration at the relevant point of time having a value of more than Rs.100/-.

As regards the relief of injunction, once it has been found to be chowk, in the absence of identity, it could not have been granted. All these factors weighed in the mind of the Courts below to arrive at the concurrent findings against the plaintiff. Thus, arguments of Mr. Mehta, do not able to bring the case within the realm of illegality and perversity.

The regular second appeal is dismissed.

January 24, 2019

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Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No