

RSA-3476-2017 (O&M)

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

RSA-3476-2017 (O&M)

Date of decision : 30.04.2019

Pirithi (deceased) through LRs and another

... Appellants

Versus

Suresh Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vaneet Soni, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-8402-C-2017

For the reasons stated in the application, which is supported by
an affidavit, delay of 4 days in filing the appeal is condoned.

CM stands disposed of.

CM-8403-C-2017

For the reasons stated in the application, which is supported by
an affidavit, delay of 63 days in re-filing the appeal is condoned.

CM stands disposed of.

CM-8404-C-2017

For the reasons stated in the application, which is supported by
an affidavit, the legal representatives of appellant No.1-Pirithi, are ordered to
be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

MAIN CASE

The appellants-defendant Nos.2 and 3/counter-claimants are aggrieved of the dismissal of the counter-claim set up in a suit for specific performance of agreement to sell, which was withdrawn by the plaintiff.

The plea in the counter-claim was that the counter-claimant had purchased the property from Krishan Kumar and Nafe Singh, who had purchased from Premawati. Premawati had acquired the property, by virtue of decree of 1995, suffered by her husband Amar Singh. The property was consisting of two shops. It was further alleged that since the suit for specific performance was for symbolic possession, the possession was with Suresh Kumar without any right and title.

The trial Court, on the aforementioned counter-claim, framed issue Nos.5A and 5B.

The plaintiff, who was the defendant in the counter-claim, opposed the claim, by alleging that the property was part of khasra Nos.351 & 352 and there is no reflection of the same in the sale deed.

Both the parties led extensive evidence.

Mr. Vaneet Soni, learned counsel appearing on behalf of the appellants/defendant Nos.2 and 3/counter-claimants, submitted that Ex.PW4/B, assessment register maintained by the Municipal Committee, Kaithal, revealed the tile of Premawati, Krishan Kumar and Nafe Singh. Defendant No.1-Premawati, admitted the claim of the appellants. There was no occasion for the Courts below to reject the counter-claim, by relying upon the statement of one Dhoop Singh, suffered in the rent petition titled as “Ranjit Singh V/s Suresh Kumar.

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I am afraid the aforementioned argument is not sustainable, for the simple reason that the evidence in the previous proceedings, as per Section 33 of the Indian Evidence Act, is admissible. Dhoop Singh, in the aforementioned ejectment proceedings, stated that he had demarcated the land, which fell in Khasra Nos.351 & 352. Some Hans Raj Saini had also filed the petition under Section 145 of Cr.P.C. against Krishan Kumar, alleging the construction on Khasra No.351. The appellants have alleged to have purchased the land measuring 101.60 sq. yds., but the sale did not reflect the khasra number. The identity of the property remained, in dispute. In such circumstances, findings on issue Nos.5A and 5B, have rightly been rendered against the appellants. In the absence of direct and cogent evidence, dismissal of the counter-claim was inevitable.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Soni, 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. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

30.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**