

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

**RSA No.429 of 2017 (O&M)
Date of Decision.27.05.2019**

Raghubir

...Appellant

Vs

Chiman Lal and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.P. Jangu, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.915-C of 2017

For the reasons stated in the application, delay of 37 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.429 of 2017

The appellant-plaintiff has not been successful in
obtaining the entire relief in the suit for permanent injunction seeking
restraint against the defendant from interfering in peaceful possession
and making construction over the suit property with mandatory
injunction directing the defendant to demolish the forcible
construction.

It was alleged that plaintiff had purchased the
aforementioned suit property by virtue of sale deed and had raised
construction of boundary wall over plinth level upto 5' height towards
East and South direction in the month of November, 2004. Defendant
had no concern with the suit property, who being a strong headed

person wanted to interfere in the peaceful possession of plaintiff, thus, suit aforementioned was filed.

Defendant opposed the suit and raised objection that plaintiff entered into an agreement to sell with defendant on 15.10.2003 and since then defendant had been owner in possession in the property in dispute. Defendant had raised wall and constructed tin shed along with two *chhapars* and therefore, entitled to seek protection as per Section 53-A of the Transfer of Property Act. Even counter-claim was also set up regarding the interference in the suit property.

Both the parties led extensive evidence.

The trial Court on appreciation of evidence partly decreed the suit by restraining the defendant from raising any further construction over the suit property except in due course of law, however, relief qua restraint from causing interference in his peaceful possession was declined. The counter-claim was also dismissed. Appeal filed by the plaintiff was dismissed and that of the defendant partly allowed.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that judgments and decrees of both the Courts below in not granting injunction are not sustainable, as agreement to sell does not confer title. Defendant failed to prove on record possession. In such circumstances, mandatory injunction for demolition of construction was to be granted.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit.

Agreement to sell, much less, the possession has been proved. The injunction granted from not raising any further construction is most equitable and legal in law. The remedy of the appellant lies elsewhere in accordance with law.

In view of such 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 by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 27, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No