

RSA-440-2017 (O&M)

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

**RSA-440-2017 (O&M)
Date of decision : 11.03.2019**

Baljit Singh

... Appellant

Versus

Sarbania and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Madan Sandhu, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the appellant-plaintiff for permanent injunction, decreed by the trial Court, has been dismissed.

It was asserted that he had been in possession of the suit property as *gair marusi* and relied upon *rapat* No.230 dated 16.02.2011 (Ex.P2) and Khasra girdawari (Ex.P3).

The defendants on the other hand opposed the suit and denied the possession of the plaintiff by claiming their, on the basis of the jamabandi and khasra girdawari.

The trial Court though granted the relief in favour of the plaintiff, but as noticed above, has been set aside in appeal.

Mr. Madan Sandhu, learned counsel appearing on behalf of the

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appellant-plaintiff submitted that the *rapat* No.230 dated 16.02.2011 proved through Patwari established continuous possession of the plaintiff, in such circumstances, the lower Appellate Court ought to have granted the injunction by rejecting the documents of the defendants.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, the plaintiff in cross-examination, admitted that the defendants had already in possession and constructed the *khota*. No relief of mandatory injunction of possession has been sought, even otherwise, *gair marusi*, would not acquire the title without any declaratory decree (through the intervention of the Court). Having failed to establish the possession, the judgment and decree of the lower Appellate Court cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination. No ground is made out for interference.

The present regular second appeal is accompanied by an application seeking condonation of delay of 134 days in filing the appeal. The application is bereft of any plausible explanation. Accordingly, the present second appeal is dismissed on the ground of limitation as well as on merits.

11.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**