

RSA-4435-2017 (O&M)

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

**RSA-4435-2017 (O&M)
Date of decision : 07.02.2019**

Ashok

... Appellant

Versus

Balraj and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.C. Rajput, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful in claiming the permanent injunction against the defendants in respect of the suit property on the premise that it is *abadi deh* and he was non-proprietor. Since the defendants asserted the right in the property, a cause of action arose to file the suit. Even the boundary wall was also raised for storing upplas and other domestic articles.

The defendants opposed the suit by raising certain preliminary objections regarding maintainability and on merits, it was stated that the plaintiff was not owner in possession of the suit property, rather the land shown in the site plan with letters ABCD was a part of Plot No.152 measuring 103 Sq. Yds.. It was also denied that the suit property was excluded in the partition proceedings, rather the suit property was vacant at the time of partition proceedings and was allotted to the defendants at Sr. No.116 bearing Plot No.152.

The plaintiff examined himself as PW1, Sohal Lal Verma draftsman as PW2 and brought on record site plan as Ex.P1, whereas the

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defendants examined himself as DW1 and Bhora as DW2 and tendered in evidence various documents as Ex.D1 to Ex.D5.

Mr. K.C. Rajput, learned counsel for the appellant-plaintiff submitted that the defendants have not been able to establish the possession despite extensive evidence, as noticed above, whereas the site plan brought on record, has been proved through the testimony of PW2, draftsman. The execution is pending with regard to the partition proceedings and till then, the possession of the plaintiff was required to be maintained.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, the onus is always upon the plaintiff to seek injunction. The aforementioned un-controverted evidence brought on record by the plaintiff would give a presumption that the suit property had already been partitioned. If at all, the plaintiff was aggrieved of the aforementioned partition, he has a right to assail the same in independent proceedings, but not in the manner and mode.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

07.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**