

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

**RSA No.5645 of 2017 (O&M)
Date of Decision.22.04.2019**

Mohit Kumar

...Appellant

Vs

Raj Rani and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shevatanshu Goel, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.14919 of 2017

For the reasons stated in the application, delay of 1 day
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.5645 of 2017

The present regular second appeal is directed against the
concurrent finding of fact whereby suit of the appellant-plaintiff for
mandatory injunction for removal of the illegal construction from
chabutra marked ABCD further decree of permanent injunction
seeking restraint including chabutra in the shop by raising any sort of
construction over the chabutra, has been dismissed by the trial Court
and affirmed in appeal by the lower Appellate Court.

Plaintiff alleged that one residential house bearing MCK
No.868/9 consisting two rooms, sahan, latrine situated on the first
floor shown in green colour in the site plan whereas ground floor of
the property mentioned in paragraph 1 of the plaint as shown in red
colour in the site plan dated 19.12.2010 was owned by defendants.

The portion ABCD is *chabutra* and wall marked CD which is ownership of the plaintiff but the same was in possession of Ashok Kumar son of Rangi Rai as tenant. The ejectment petition against Ashok Kumar regarding the premises having become unsafe and unfit was stated to be pending and defendants had no right to raise construction on the *chabutra*.

Defendants contested the suit and raised objection qua maintainability, cause of action and non-joinder of parties. On merits, stated that ejectment petition vide order dated 17.02.2007 was allowed but on 11.12.2009, the appeal filed against the same was accepted by the Appellate Court. The plaintiff intentionally prepared the site plan without disclosing the real facts as in the southern side of the property shown in red colour was stairs and *chabutra* which was demolished by father of the plaintiff. The plaintiff along with his father tried to grab the wall situated adjacent to the suit property for which they have no right and title.

Plaintiff in support of pleadings examined two witnesses tendered certain documents whereas defendants examined DW1 Vinod Kumar and brought on record various documents.

Mr. Shevatanshu Goel, learned counsel appearing on behalf of the appellant submitted that both the Courts below have not adverted to the admission of defendants with regard to ownership of property and therefore, onus of proving ownership remained dispensed with. The sale deed tendered into evidence even if not proved but was no objection to the same. All these factors if read in cumulative, gave rise of substantial question of law for setting aside

the wholly perverse judgment under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. In case of such nature, it is obligatory upon the plaintiff to establish on record by way of demarcation proof of ownership, alleged encroachment or attempt to take away ownership rights under the garb of the construction. In the absence of the same, dismissal of the suit for mandatory injunction was inevitable. In other words, plaintiff miserably failed to discharge onus as per the provisions of Section 101 of the Indian Evidence Act.

During the course of hearing, this Court was apprised of the fact that civil revision at the instance of the appellant arising out of ejectment proceedings is pending in this Court. The aforementioned pendency of revision petition will not be a ground for issuance of notice, in view of the reasoning assigned above.

In view of such circumstances, I do not find any illegality and perversity in the judgments and decreed rendered by the Courts below, 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

April 22, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No