

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

**RSA No.5784 of 2017 (O&M)
Date of decision:10.04.2019**

Mahinder Kaur

... Appellant

Vs.

Angrez Singh and others

... Respondents

RSA No.5785 of 2017 (O&M)

Mahinder Kaur

... Appellant

Vs.

Angrez Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Punchhi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two regular second appeals bearing nos.5784 and 5785 of 2017 preferred by the appellant-defendant arising out of civil suit no.287-C of 2009 titled as “Angrej Singh Vs. Kulwant Singh and others” whereby suit aforementioned was partly decreed qua 11 marlas of land and remaining 1 marla was declined but while entertaining two appeals, the Lower Appellate Court has decreed the suit in entirety.

Angrej Singh son of Sadhu Singh sought the injunction against the defendants from interfering into peaceful possession being residing separately from the defendants with his family for the last 25 years. The plaintiff had purchased the residential plot measuring 11 marlas vide registered sale deed dated 26.5.1997 which was delivered to him and 1 marla by way of affidavit dated 28.02.2007. Thereafter, the plaintiff raised the construction of two shops upon the plot measuring 1 marla and rented out to two different persons. The plaintiff wanted to make a wall on the Western side of the house, thus, dispute arose. The matter was referred to the police and the police obtained the signatures of the plaintiff on the blank papers. The father of the plaintiff and the defendants had executed a Will dated 4.1.2002 which was cancelled on 07.01.2005.

Defendants no.1 to 3 contested the suit by asserting that sale deed propounded by the plaintiff was forged and they reserved their right to challenge the same. It was stated that village Panchayat had divided the house in dispute on 26.8.2009 wherein the plaintiff promised to withdraw all the cases.

The plaintiff in support of the averments examined six witnesses and brought on record Ex.P1 to Ex.P6, electricity bills, copy of ration card-Ex.P7, receipts of electricity bills Ex.P8 to Ex.P14 alongwith Mark A. The defendants examined five witnesses and brought on record Ex.DA to Ex.DD.

Learned counsel appearing on behalf of the appellant submitted that plaintiff miserably failed prove the construction of two shops on one

marla of land on the basis of alleged acquisition of title by way of an affidavit which is not permissible in law. His client abided by the terms and conditions of the compromise Ex.DW5/B arrived between the parties at police station. The sale deed did not describe any constructed portion except 11 marlas of land bounded by four walls. The identity of the property is in dispute for claiming injunction and the onus of long and settled possession heavily relied upon the plaintiff remained un-discharged.

I am afraid the aforementioned arguments are not sustainable for the simple reason that plaintiff has proved the title qua 11 marlas of land. Coming to 1 marla, the compromise if read in toto established that Angrej Singh was in possession of two shops constructed in one marla. The pleadings if read with compromise leave no manner of doubt that shops have been constructed on 01 marla of land. The defendant cannot be permitted to take complete summersault than the one referred to in the compromise. Thus, the Lower Appellate Court being the last Court of fact and law after examining the evidence has rightly decreed the suit.

Resultantly, the regular second appeals are dismissed.

(AMIT RAWAL)
JUDGE

April 10, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No