

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

**RSA No.6021 of 2017 (O&M)
Date of Decision.27.05.2019**

Raj Kumar

...Appellant

Vs

Sanjay

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parminder Singh, Advocate
for the appellant.

-.-

AMIT RAWAL J. (ORAL)

The appellant is in regular second appeal against the concurrent finding of fact whereby suit of the respondent plaintiff for injunction qua one room on the ground floor and two rooms on first floor of House No.1523, Tota Mandi, Kacha Bazar, Sadar, Ambala Cantt. has been decreed by the trial Court and affirmed in appeal.

The respondent plaintiff alleged that one Ishwar Chand, owner of the property, had entered into agreement to sell dated 17.01.2012 registered on 20.01.2012 and executed Will dated 30.01.2012 and power of attorney in favour of the plaintiff but defendant extended threat claiming himself to be in possession, therefore, suit aforementioned was filed.

Defendant opposed the suit and denied all the aforementioned documents and propounded an agreement of February, 2008 executed by Ishwar Chand.

Both the parties led extensive evidence. Plaintiff brought on record electricity and sewerage bills, details of previous

suit and as well as agreement to sell whereas defendant placed on record photographs and various other documents.

Mr. Parminder Singh, learned counsel appearing on behalf of the appellant-defendant submitted that at the best plaintiff ought to have sought specific relief because it was not a sale as per the provisions of Section 202 of the Contract Act. The photographs proved possession of the defendant and therefore, injunction was liable to be rejected.

I am afraid aforementioned argument would not be sustainable, as no evidence qua possession like electricity bills, water connection, Aadhar and ration card etc. were brought on record. In other round of litigation, the defendant was alleged to be a tenant and in possession of one room *vis-a-vis* evidence of the plaintiff as noticed above. In such circumstances, decretal of the suit was inevitable.

Learned counsel for appellant also submitted that in a complaint to the police, statement was made with regard to possession of the defendant. The aforementioned statement recorded in DDR would not be a clincher for establishing possession, as defendant failed to rebut the onus discharged by the plaintiff.

The appeal is also accompanied by an application for condonation of delay of 130 days in filing of the appeal. The explanation given is not reasonable and plausible.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by 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

May 27, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No