

RSA No. 5562 of 2018 (O&M)

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

**RSA No. 5562 of 2018 (O&M)
Date of decision: 30.9.2019**

Vijay Pal

... Appellant

Versus

Mahabir

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Sudhir Hooda, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 19.9.2016, and as even the appeal preferred against the said decree failed and was dismissed on 26.04.2018, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that he was owner in possession of the house depicted in blue colour in the site plan, appended with the plaint, and therefore, the defendant be restrained from causing any interference in his lawful possession.

In brief, his case was that he was a co-sharer in the residential house situated within the abadi deh of village Ladhot, Tehsil and District Rohtak, comprised in khewat No. 78, khatoni No. 96 and 97, Rect. and killa No. 52/2/13, measuring 1 kanal 4 marla. The plaintiff was residing in the said house, but as defendant intended to disposes him, thus the suit.

RSA No. 5562 of 2018 (O&M)

In defence, the defendant pleaded, *inter alia*, that plaintiff was neither the owner nor in possession of the house in question. In fact, the suit property belonged to the defendant since the time of his forefathers. Further, it was not a part of killa No. 52/2/13.

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that onus to prove title as also possession over the suit property was upon the plaintiff. However, he failed to adduce any cogent evidence in this regard. The oral testimony of the witnesses examined by the plaintiff as also the site plan and the jamabandi, neither proved existence of any house at the spot nor showed that plaintiff was in exclusive possession of any such premises. Even otherwise, the site plan (Ex. PW2/A) could not be relied upon, for the draftsman (PW2) admitted in his statement that he prepared the same on instructions of the plaintiff and he actually never visited the spot. On the contrary, defendant (Mahabir) appeared as his own witness and testified his claim in his deposition. He relied upon the site plan (Ex.D1), showing the house he was in possession of. No doubt, as per jamabandi (Ex. PY), the appellant was recorded to be a co-sharer. However, no evidence was led to show if any house was in existence in that property. On the contrary, the defendant had placed on record voter list, house tax receipts, ration card, electricity bills and other record to show that he was in occupation and possession of the house that was recorded in his name. Not just that, receipts (Ex.D24 to Ex.D28), proved that it was he who was paying the house tax for the house in question. The electricity bills (Ex.D11 to Ex.D13) proved installation of the electricity connection in the said premises which was in the name of the defendant. Maha Singh (DW4) deposed that he was a tenant in the house in

RSA No. 5562 of 2018 (O&M)

question under the defendant. Thus, in the given situation, the only and the inevitable conclusion that could be reached: the plaintiff failed to substantiate his claim for lack of evidence.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

**(ARUN PALLI)
JUDGE**

September 30, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO