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

RSA-669-2017 (O&M)

Date of decision : 15.01.2019

Bihari Lal Gupta

... Appellant

Versus

Mahender Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Partap Singh, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

As per order dated 07.11.2017, Mr. Keshav Partap Singh, Advocate, has appeared as *pro bono* for the appellant.

The appellant-plaintiff sought declaration, permanent injunction and mandatory injunction as well as damages against the defendants in respect of the land measuring 1548 sq. yds., situated within the limits of Municipal Committee, Jhajjar. It was asserted that the property in dispute was ancestral. One Hardev Sahai had two sons, namely, Gokal Chand and Ganga Sahai. Ganeshi Lal was the son of Gokal Chand. He had two sons Ramji Lal and Shiv Lal. Ramji Lal died issueless. Shiv Lal had two sons Bhagwan Dass and Jawhar Lal. Jawahar Lal died issueless and Bhagwan Dass had two sons, namely, Umrao Singh and Murli Dhar. Murli Dhar had four sons including the plaintiff Bihari Lal. The property came to the plaintiff from Murli Dhar as three son were not residing in the suit

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property since 1950. It was alleged that the plaintiff on 12.02.2005 suffered heart attack and locked the premises. He went to Delhi along with his family for medical treatment and spent an amount of ₹35 Lakhs. On return, found that the defendants had forcibly taken possession and claimed to be owner on the basis of some impugned sale deed.

Defendant Nos.2 to 4 contested the suit by raising objection of maintainability, estoppel, limitation and denied that the plaintiff at any point of time resided in Jhajjar for the last 40 years, whereas the defendant along with family had been residing as owner in possession of the suit property. The ownership was acquired through various sale deeds dated 04.04.1994, 16.01.1995, 03.07.1995, 09.03.2005 and 27.12.2005. The sale deeds of the defendants were declared legal and valid in a Civil Suit No.1606 of 1995 decided on 22.07.2002.

The trial Court dismissed the suit, but the lower Appellate Court, on the basis of the evidence brought on record and admission of the defendants, conferred the plaintiff to be owners qua 54 sq. yds., but declined to grant declaration with a liberty to avail remedy of partition.

Learned counsel for the appellant-plaintiff submitted that before the lower Appellate Court, eleven applications were filed for placing on record the additional evidence, but vide order dated 26.10.2016, were dismissed, in essence, remained unchallenged in the present appeal. Ration card brought on record established the possession of the plaintiff, in respect of the premises situated within the Municipal Limits of District Jhajjar. The lower Appellate Court ought not to have dismissed the applications independently, but decided along with the appeal, thus, there is an abdication. The ownership has also been proved.

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I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Keshav Partap Singh, for, the sale deeds in favour of the appellant, as referred to above, have already been upheld in the Civil Suit No.1606 of 1995, which has gone un-rebutted and un-controverted. The defendants had been fair to this Court by admitting the ownership of the plaintiff to the extent of 54 sq. yds. In such circumstances, his status was of a co-sharer and could not have been granted exclusive possession, in the absence of the relief of partition or separate possession. This is what has been held by the lower Appellate Court.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Keshav Partap Singh, to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

15.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**