IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

-.-

RSA **15002 of 2018 (O&M)**
Date of decision: 01.04.2019

Harbans Lal and others .....*Appellants*

Versus

Sham Sunder .....*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. C M Munjal, Advocate
for the appellants

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 30.08.2018 passed by the Additional District Judge, Fazilka whereby appeal preferred by the respondent/plaintiff against judgment and decree dated 30.09.2016 passed by the trial Court was accepted, judgment and decree impugned were set aside and suit filed by the respondent/plaintiff for possession and permanent injunction was decreed to the following effect:-

> *"So, in view of the above discussion, the present appeal is allowed with costs and judgement and decree dated 30.09.2016 passed by the learned lower Court is set aside. Suit of the appellant/plaintiff is decreed with costs for possession and permanent injunction. Resultantly, respondents are directed to hand over vacant possession of the suit property*

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2019.04.05 10:35
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> *measuring 66'x81' to the appellant within two months from today, failing which the appellant shall be at liberty to approach the Court for requisite relief. Respondents are also restrained from further transferring possession of suit property to anybody else. Respondents are further restrained from raising any type of construction over the suit in any manner illegally or forcibly."*

Counsel for the appellants/defendants would argue that since possession of suit property was delivered to the appellants by two co-sharers namely Jhanda Ram son of Munshi Ram (DW1) and Harbhajan Lal son of Nadar Ram (DW2) in absence of respondent having filed a suit for partition and becoming successful therein, the respondent/plaintiff can not file a suit for possession.

The appellants/defendants raised contradictory plea with regard to possession of suit house having been delivered in their favour by two co-owners aforesaid and adverse possession of the suit house, thus, have every right in the suit property.

Indisputably, delivery of possession by the two cosharers namely Jhanda Ram and Harbhajan Lal, examined in the case, is not supported by a document much less registered deed. There cannot be dispute about settled position in law that any right, title or interest in immovable property of value of more than Rs.100/- cannot be transferred, relinquished etc., except by way of a registered document. In the given circumstances, even if plea of the appellants is accepted that they are in permissive possession on account of having been delivered possession by Jhanda Ram and Harbhajan Lal, their possession cannot be better than that

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of a licensee and as such, suit for possession filed by one of the co-owners of the suit land cannot be held to be incompetent or non-maintainable.

Counsel for the appellants has fairly conceded that plea of the appellants with regard to their hostile possession does not get corroborated from any material on record. In this view of the matter, I do not find an error much less perversity in the judgment passed by the appellate Court setting aside the judgment and decree passed by the trial Court and decreeing suit of the respondent/plaintiff.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed *in limine*. No order as to costs.

(Rekha Mittal)
Judge

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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No

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