

RSA No. 9627 of 2018 (O&M)

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

**RSA No. 9627 of 2018 (O&M)
Date of decision: 19.11.2019**

Ram Singh

... Appellant

Versus

Dalip and others

... Respondents

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

Present: Mr. J.P. Sharma, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondents-plaintiffs as also the counter-claim preferred by the appellant-defendant were dismissed by the trial court, vide judgment and decree dated 11.3.2015. Two separate appeals were preferred by the parties against the said decree. The appeal filed by the respondents-plaintiffs was dismissed for non-prosecution on 3.7.2018. Whereas, the appeal of the appellant-defendant failed and was dismissed on 4.7.2018, and this is how, 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 respondents-plaintiffs prayed for possession of the suit property, as depicted in the cause title of the plaint, situated at village Nangal Chaudhary, Tehsil and District Narnaul. In brief, the case set out by them was that they were owners in possession of one Haveli, shown in red colour

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in the site plan, pursuant to a release deed No. 1063 dated 3.1.2011. Though the defendant was neither the owner nor in possession of the Haveli, yet he forcibly occupied one room and a kitchen that formed part of the said property and was, thus, in unlawful possession.

In the written statement filed by the defendant, it was pleaded, *inter alia*, that suit was devoid of any cause of action and was time barred. Further, claim of the plaintiffs that they were owners in possession of the suit property was denied. It was denied if the defendant had no concern with the Haveli. The release deed dated 3.1.2011 was alleged to be a forged and fabricated document. In fact, the suit property was co-parcenary in nature and devolved upon the defendant from Kanhiya son of Chokha. It was constructed out of Joint Hindu Family funds, and the defendant had 1/3rd share therein. Earlier a suit for recovery was filed against the defendant, titled as Rameshwar Vs. Ram Singh, and in the execution, share of the defendant was attached. As regards this, father of defendant (Ishwar) had filed third party objections, and maintained that defendant (Ram Singh) had no concern with the property. However, those objections were dismissed and it was concluded that the disputed Haveli was the property of Joint Hindu Family and was constructed out of Joint Hindu Family funds. It was denied if the possession of the defendant was illegal. Therefore, defendant, being owner in possession to the extent of 1/3rd share, was fully entitled to raise construction.

In the counter-claim filed by the defendant, he claimed declaration qua ownership and possession of his 1/3rd share in the suit property, and the release deed dated 3.1.2011 be declared to be a result of fraud and misrepresentation.

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Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that case set out by the plaintiffs was that they were owners in possession of the suit property, pursuant to release deed dated 3.1.2011 and defendant was in illegal possession. However, the release deed (Ex.PW3/B), upon which claim of the plaintiffs was predicated, showed that suit property was co-parcenary in nature. That being so, the defendant too had a share therein and thus he could not be dispossessed from the suit property. On the other hand, defendant had sought a declaration that he was owner in possession of 1/3rd share and the alleged release deed was null and void. However, he failed to append any affidavit in support of his counter-claim. And, in terms of Order 8 Rule 6A(4) of the Code of Civil Procedure, ***“the counter-claim is to be treated as plaint itself and governed by the rules applicable to the plaints.”*** Further, Order 6 Rule 15 (4) CPC postulates that ***“the persons verifying the pleadings shall also furnish an affidavit in support of his pleadings.”*** Thus, defendant was obliged to file an affidavit in support of his counter-claim, but he failed to comply with the said condition. Even though the defect was a mere irregularity, yet the defendant chose not to cure it, even till the final arguments in the suit. No application was moved either to file an affidavit in support of his counter-claim, despite the fact that an objection in this regard was raised by the counsel for the plaintiffs, during arguments. Therefore, the counter-claim preferred by the defendant could not be entertained.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No

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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

November 19, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	YES/NO