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

**CM No.25381-CII of 2019 in/and
Civil Revision No.7861 of 2019 (O&M)
Date of Decision: 13.12.2019**

Rakesh Kumar

.....Petitioner

Vs

Pooja Mittal and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Harkesh Manuja, Advocate
for the non-applicant/petitioner.

Mr. Amit Jhanji, Advocate
for the applicants-respondents.

RAJ MOHAN SINGH, J. (Oral)

CM-25381-CII-2019

For the reasons mentioned in the application and no objection shown by learned counsel for the petitioner, accompanying documents viz. Annexures A-1 to A-3 are taken on record, subject to all just exceptions.

Application stands disposed of.

CR-7861-2019 (O&M)

[1]. Petitioner has preferred this revision petition against the orders dated 14.05.2019 and 03.09.2019 passed by the Courts below, vide which the application under Order 39 Rules 1 and 2 CPC

filed by the petitioner was concurrently dismissed.

[2]. *Prima facie* consideration of the material would show that the dispute is in respect of roof of the shop adjacent to the shop of the defendants. Plaintiff claimed that he is owner in possession of the suit property marked by letters 'ABCD' i.e. Shop No.161/11 on the basis of sale deed No.813 dated 08.03.1994. He claimed himself to be in peaceful enjoyment of the the suit property including its roof for storage of extra goods and other uses as per necessity. Plaintiff also assailed sale deed dated 12.03.2015 in favour of defendants No.5 and 6 and sale deed dated 19.07.2018 executed by defendants No.5 and 6 in favour of defendants No.1 and 2 being the result of fraud. Will dated 23.06.2010 has also been assailed.

[3]. Plaintiff claimed that roof of the shop belong to the plaintiff on the strength of sale deed dated 08.03.1994. The recital of the aforesaid sale deed would show that Shop No.161/11 had specified dimensions vide which Suresh Kumar son of Parmanand sold the same to the plaintiff Rakesh Kumar son of Karam Chand. The vendor of the plaintiff had purchased the same vide registered sale deed No.1369 dated 04.06.1993 from Ram Lal Mittal son of Suraj Bhan which clearly recited that the suit land/shop was having defined dimensions.

[4]. Respondents opposed the application on the ground

that the plaintiff has concealed material facts. Earlier R.K. Mittal was owner in possession of the suit property and he rented out the upper portion of the gallery to Deep Chand, who later on purchased the ownership of the upper portion from Ram Kumar Mittal vide sale deed dated 04.06.1993. Thereafter the same was transferred in favour of his son Ravinder. Ravinder thereafter transferred the same in favour of his sons i.e. defendants No.5 and 6 vide family transfer deed No.4166 dated 12.03.2015. Defendants No.5 and 6 further sold the same in favour of defendants No.1 and 2 vide sale deed dated 19.07.2018. Ram Kumar Mittal rented the lower portion of the building to Ram Lal Mittal.

[5]. Defendants further alleged that Ram Lal Mittal fraudulently sold the ground floor of the property to the Suresh Kumar vide sale deed dated 04.06.1993, who later on sold the same to the plaintiff Rakesh Kumar vide sale deed dated 08.03.1994.

[6]. Perusal of the sale deed dated 04.06.1993 executed by Ram Kumar Mittal and sale deed dated 08.03.1994 would show that the same are in respect of Shop No.160/11 and 161/11 respectively. Plaintiff claimed himself to be owner of Shop No.161/11 and its roof, whereas the adjoining property bears No.160/11. There is a serious dispute with regard to the

ownership rights of the roof over Shop No.161/11.

[7]. Since the suit is itself at initial stage and rights of the parties are yet to be determined by the trial Court with reference to the evidence to be led by them, therefore, in my considered opinion, it would be just and appropriate to direct both the parties to maintain *status quo* as regards construction as it exists today.

[8]. With the aforesaid observation, the present revision petition is disposed of. However, in view of the facts and circumstances of the case, the trial Court shall make every endeavour to decide the suit at the earliest.

[9]. The trial Court shall proceed with the suit strictly in accordance with law without being influenced by any statement of fact recorded hereinabove.

December 13, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No