

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

RSA No.5803 of 2019(O&M)

Date of decision: 6.2.2020

Mansha Ram (since deceased) through LRsAppellant

VERSUS

Mangat RamRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ram Bilas Gupta, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.16649-C of 2019

Prayer in this application is for condoning delay of 7 days in re-filing the appeal.

Heard.

In view of averments made in the application, the same is allowed. Delay of 7 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA No.5803 of 2019

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondent/defendant from raising any construction, causing any damage or making any alteration in the suit property namely House No.2360/1 situated at Balmiki Majri, Nahan House, Ambala City filed against respondent/defendant who is none else but nephew of the appellant was dismissed by the trial Court vide

judgment and decree dated 10.02.2016 that came to be affirmed in appeal by the District Judge, Ambala.

Counsel for the appellant would argue that both the Courts have negated plea of the appellant qua his ownership of the suit house. It is argued that in the house tax assessment record maintained by Municipal Authorities of Ambala, the appellant is recorded as owner of the suit house. The respondent/defendant has not challenged correctness of that entry nor produced any documentary evidence to establish his ownership of the suit property. He would fairly inform that an application for additional evidence was filed before the Appellate Court to produce certified copy of sale certificate issued in the name of Sh. Sawan Ram, father of the appellant and a report was sought from the trial Court with regard to additional evidence. The trial Court sent the matter back to the Appellate Court without recording additional evidence. Thereafter, an application was filed by the appellant under Section 151 CPC permitting to exhibit certified copy of auction certificate but the same was dismissed. Against order dated 21.11.2018, revision petition was filed before the High Court but the same was dismissed on 29.04.2019.

Perusal of the judgments passed by the Courts particularly the facts noticed from the written statement of the respondent/defendant, it is apparent that the respondent has denied that suit house was owned by father of the appellant. It is averred that copy of house tax assessment is not a proof of ownership and such entry has been got affected by the appellant in connivance with officials of the Municipal Committee/Municipal Council, Ambala City where the appellant/plaintiff was an employee. He has also pleaded that since very beginning, electricity connection was in his father's name for the past more than 50

years and his father was in possession of the house in dispute for the last more than 60/70 years.

The appellant failed to produce any evidence with regard to ownership of the suit house by his father. Despite an opportunity being allowed by the Appellate Court to prove the sale certificate sought to be produced and proved by way of additional evidence, the appellant failed to adduce any evidence before the trial Court. His contention for tendering certified copy of auction certificate by invoking Section 151 CPC was rejected by the Appellate Court and order passed by the Appellate Court was tested in CR No.1839 of 2019 by this Court and the same was dismissed. The Appellate Court has reproduced a relevant extract from the said order in para 15 of the judgment.

As per the settled position in law, an entry in the house tax assessment register is not an evidence of ownership. The said entry appears to have been got incorporated by the appellant taking advantage of his being an employee of Municipal Council, Ambala City. As the appellant failed to establish his ownership of the suit house, he has no legal right to contend that the respondent, admittedly, in possession of the suit house cannot make any structural alteration therein or in case he is so allowed, it would cause irreparable loss or injury to the appellant/plaintiff. In this view of the matter, I do not find an error much less perversity in the judgments impugned that would call for intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

FEBRUARY 6, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no