

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

RSA-3990-2018 (O&M)
Date of decision : 21.01.2020

Ranbir

...Appellant

Versus

Kuldeep and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sushil Jain, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-10584-C-2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 190 days in refiling the present appeal is condoned.

Application is allowed.

CM-10585-C-2018

Deficiency in the Courts fees has already been made good.
Delay, if any, is condoned.

Application is allowed.

Main case

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit for recovery of possession of the disputed plot No.366 measuring

1051 square yards with the consequential relief of permanent injunction.

Plaintiff had filed the present suit claiming that vide judgment and decree dated 25.01.2003, father of the plaintiff was declared owner and was delivered possession and when the plaintiff went out of the village for a period of 4 months and during his absence, the defendants encroached thereupon and constructed the house.

In the written statement, the defendants contested the suit by claiming that the plaintiff as well as the defendants are heirs of Baru and a family settlement had taken place according to which the defendants were handed over the possession of khasra No.366 whereas the plaintiff was handed over the possession of khasra No.370.

Both the Courts below, on appreciation of evidence, have found that the plaintiff has failed to prove his case. The Courts have held that the story of the plaintiff that he had gone out of the village and in his absence the defendants had taken the possession of the plot in question, is false. Still further, the plaintiff has not stepped into the witness-box. His son has appeared as PW2. He admit that the construction of the house in question on the land comprised in khasra No.366 is old, prior to the time his memory goes. Son of the plaintiff was 34 years of age on the day when the deposition was made. Still further, the Courts have relied upon the report of the Local Commissioner who has opined that the construction on the plot in question is old.

Learned counsel for the appellant while referring to the judgment and decree passed and rapat evidencing delivery of possession, submits that once in the partition proceedings, the plaintiff had been held

entitled to plot No.366 and the possession thereof was delivered, therefore, the Courts erred in dismissing the suit. He submitted that the judgments passed by the Court below are liable to be reversed.

This Court has considered the submissions as noted above. The plaintiff has not appeared in evidence, thus, important opportunity with the defendants to cross-examine the plaintiff, has been denied. Thus, the Courts below have rightly drawn adverse inference against the plaintiff. Further, son of the plaintiff when appeared in evidence as PW2, has admitted that the construction of the house on plot No.366 is old, even prior to the period till his memory goes. He was 34 years old when he appeared in evidence. Thus, the case set up by the plaintiff stands falsified by his own evidence. Still further, PW2 in his cross-examination, has admitted that the property for which the instant suit has been filed was not part of the plot No.366 and it was part of the street.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the present appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of in view of the abovesaid judgment.

21.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No