

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA-6242 of 2018 (O&M)  
Date of decision: 12.03.2020

Santosh

... Appellant

versus

Joginder & Ors.

... Respondents

**CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Namit Sharma, Advocate,  
for the appellant.  
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**ARUN MONGA, J.**

**CM-17504-C-2018**

Application is allowed and delay of 19 days in filing the appeal stands condoned.

**RSA-6242 of 2018**

1. Appellant herein arrayed as defendant No.1 in civil suit is wife of defendant No.2, who is real brother of the plaintiff. She is in second appeal before this Court having suffered adverse concurrent findings by both the Courts below whereby plaintiff's suit for permanent injunction seeking to restrain his brother and brother's wife from interfering in suit property has been decreed against the defendants.

2. The facts of the case in nutshell are that plaintiff asserted his possession over roof to two shops(marked EFGH) by virtue of sale-deed dated 10.04.2009 executed in his favour by his mother Smt. Radha Bai. It is claimed that mother was owner in possession of 6 shops, out of which 2 shops were sold to defendants but without roof rights. The plaintiff had

constructed a house over those shops on the basis of will dated 22/23.07.2004 executed in his favour by his mother. It is asserted that defendants want to interfere in his possession over the roof of two shops in dispute for which they have no right, title or interest. Hence the suit.

3. The defendants contested the suit. It was denied that plaintiff is owner in possession of the roof of the shops marked EFGH. Will dated 22/23.07.2004 was denied and stated to be a forged document. It was also denied that roof of two shops was ever sold by Radha Bai mother of defendant No.2 and plaintiff.

4. The parties led their respective oral and documentary evidence in support of their rival pleadings to discharge their respective onus as per the issues framed.

5. After analyzing the evidence adduced by the parties, the trial Court vide judgment dated 30.10.2015 decreed the suit in favour of plaintiff. The defendants were restrained from interfering in peaceful possession of the plaintiff over first floor of two shops marked as EFGH shown in green color in the site plan, which is portion of H. No. 409/11 marked by letters ABCD. Defendants and were further restrained from alienating the suit property by way of sale, mortgage lease or in any other manner.

6. Defendants filed an appeal before the First Appellate Court below, which was dismissed vide judgment and decree dated 08.02.2018. Hence, the instant regular second appeal by defendant No.1 wife of defendant No.2 who is brother of plaintiff.

7. I have heard learned counsel for the appellant and have perused the judgments passed by the Courts below vis-a-vis the grounds of

appeal taken before this Court.

8. It is apparent that defendant No.1 purchased two shops by virtue of sale-deed dated 10.04.2009(Ex.PW7/1), wherein there was specific recital that vendee will not use the roofs of the shop, meaning thereby that roof rights were not sold by the vendor. Defendant No.2 candidly admitted in his cross-examination that since the day he had purchased the shops, house has been constructed over the shops in which plaintiff is residing. In the circumstances, both the Courts below rightly held that defendants have no right, title or interest in the roof rights of the shops and rightly restrained them from interfering in the possession of the plaintiff over the roof of their two shops.

9. In my opinion, the conclusions drawn by the learned trial Court and the learned first Appellate Court are in consonance with the record and facts of the case. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below on appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are

upheld.

- 12. Pending applications stand disposed of.
- 13. No order as to costs.

(ARUN MONGA)  
JUDGE

March 12, 2020  
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| Whether speaking/reasoned : | Yes/No |
| Whether reportable :        | Yes/No |