

RSA-5834-2019(O&M) 1

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

**RSA-5834-2019(O&M)
Date of decision: 06.01.2020**

Rama Rani

.....Appellant

Versus

Kanta and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Manish Singh, Advocate for the appellant

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in Regular Second Appeal against concurrent finding of fact arrived at by the Courts below, partially decreeing the suit filed by the plaintiff for declaration that she is in possession of the property. The Courts below have not granted declaration that the plaintiff is the owner of the property. The plaintiff claims to be widow of the sole owner Late Sh. Ram Kumar, whereas the defendants claim to be relatives of Late Sh. Ram Kumar. Defendant examined Rakesh Kalia and Randhir Singh as DW4 and DW6 respectively, who had admitted that plaintiff-respondent is in possession of the property in dispute. She has also produced receipts of property tax for the year 2013-Ex.PY. Thus, the Courts have found that the plaintiff is proved to be in possession of the property.

Learned counsel for the appellant submitted that since the

respondent-plaintiff failed to prove her relationship with Late Sh. Ram Kumar, therefore, her suit should have been dismissed. He further submitted that the present suit is barred under Order 2 Rule 2 CPC.

On consideration of the arguments of learned counsel for the appellant, this Court is of the view that there is no merit in the present appeal, particularly, when both the Courts have not granted declaration to the plaintiff -respondent that she is the owner of the property. Only limited relief of declaration that respondent-plaintiff is in possession has been granted. Possession of the plaintiff-respondent is proved on the admission of Rakesh Kalia and Randhir Singh, the witnesses examined by the defendants themselves. Further receipt of payment of property tax of the property in dispute by the plaintiff also corroborates the case of the plaintiff.

As regards, second argument of the learned counsel for the appellant with regard to suit being barred under Order 2 Rule 2 CPC, he has admitted that plaint of the previous suit has not been brought on the file of this case. Previous suit was for permanent injunction. In the absence of pleadings of the previous suit it would not be appropriate for the Court to assume that the previous suit was on the same cause of action. The plea of Order 2 Rule 2 CPC has to be pleaded and proved by the party which proposes to take it as its defence. In the present case, neither any separate issue on plea of Order 2 Rule 2 CPC has been got framed nor sufficient evidence has been led to establish the aforesaid fact. In the absence of the pleadings of the previous suit, no firm finding can be recorded.

Keeping in view the aforesaid facts, there is no ground to interfere. Hence, present appeal is hereby dismissed.

06.01.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No