

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

150

2023:PHHC:110320

**SAO-40-2023(O&M)
Date of decision: 23.08.2023**

**RAKSHAWANTI @ RAKSHAWATI (DECEASED)
THROUGH HER LRS**

..Appellant

Versus

**THE PATIALA IMPROVEMENT
TRUST PATIALA**

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K. Shukla, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. The appellant before this Court filed a suit for grant of decree of mandatory injunction directing the defendants to accept the maintenance and development charges of House No.29 with a consequential relief of permanent injunction restraining the defendants from interfering in her possession. She claims to be the owner in possession of a constructed house. The defendant-Improvement Trust while filing the written statement submits that the land in dispute was acquired in the year 1974, whereas, the plaintiff claims that she purchased the property through the registered sale deed in the year 1978. Hence, the plaintiff has no right, title or interest in the property. The trial Court merely decreed the suit for grant of injunction, however, the First Appellate Court on re-appreciation of evidence found that before an order of injunction is granted, it is mandatory for the Court to decide the question of ownership, therefore, the case was remanded back to the trial Court for deciding afresh, after deciding the question of ownership of the Improvement Trust. Aggrieved against the same, this appeal has been preferred. The learned counsel representing the appellant contends that the

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appellant was permitted to deposit Rs.500/- as part of the development charges. He submits that another unencashed cheque of Rs.10,000/- was also given and, therefore, the First Appellate Court has erred in remanding the matter back to the trial Court.

2. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the appellant.

3. The respondent-Improvement Trust claims that the property has been validly acquired and, therefore, the plaintiff (appellant) has no right, title or interest in the same. In such circumstances, before granting injunction, it was incumbent for the Court to decide the question of title. The trial Court failed to decide the question of title, hence, the First Appellate Court has remitted the matter back to the trial Court.

4. Consequently, finding no merits, the appeal is dismissed.

5. All the pending miscellaneous applications, if any, are also disposed of.

August 23rd, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No