

In the High Court of Punjab and Haryana at Chandigarh

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RSA-34-2023 (O & M)

Date of Decision: January 09, 2023

RAJINDER SINGH

.....APPELLANT

VERSUS

ANAND AND ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Appellant in person.

ANUPINDER SINGH GREWAL, J (ORAL)

The appellant/plaintiff has challenged the judgment and decree of the Courts below whereby the suit preferred by him for permanent injunction has been dismissed.

The appellant, who is present in person, submits that he had made out a case for permanent injunction especially when his pleadings had remained un-rebutted and, therefore, his suit could not have been dismissed. The father of the appellant had 50 per cent share in the house which had been partitioned and, therefore, he was entitled to the permanent injunction. In support of his submissions, he has relied upon the judgment of the Delhi High Court passed in C.S. (OS) No.2248/2007 titled as **M/S ECOLAB INC Versus M/S EACO LABS LTD** decided on 28.11.2011.

Heard.

The appellant/plaintiff had filed a suit for permanent injunction stating therein that his grandfather had two sons, namely, Dariya Singh and Duli Chand, who were in possession of the ancestral house which was

thereafter partitioned by constructing a wall in the middle of the suit property. Dariya Singh had sold his share to the defendant/respondent No.2 while the father of the appellant/plaintiff, namely, Duli Chand, who was having two sons, retained his share after partition. The trial Court vide the impugned judgment and decree dated 28.04.2017 had dismissed the suit filed by the appellant and the appeal filed thereagainst had also been dismissed by the Appellate Court vide order dated 06.08.2022 by holding that the appellant produced the settlement before the learned trial Court but it was not relied upon as the witnesses before whom the alleged settlement had been written had not been examined by the plaintiff/appellant to prove his case. Neither the factum of settlement nor the foundation wall claimed by the appellant/plaintiff as his exclusive wall, had been proved.

The appellant can claim only 50 per cent of the house as it was owned by his father and his uncle in the equal share of 50 per cent each. The appellant has based his case on the partition but it has rightly been held by the Courts below that the appellant could not prove the same on record either through documentary or oral evidence. It was also not proved that the wall had been constructed for partition. The appellant as plaintiff ought to have established his case so as to entitle him to the grant of permanent injunction. Merely because the respondents/defendants have not filed any written statement and their defence had been struck off would not help the case of the appellant.

The judgment in the case of **M/S ECOLAB INC Versus M/S EACO LABS LTD** (supra) is distinguishable on facts and not applicable to the

instant case. In that case, the appellant therein had sought an injunction to restrain the defendants from infringement, passing off the trade mark and the factual basis for the injunction had been set out in the plaint and it was in such circumstances held that in the absence of rebuttal by the defendants, the suit of the appellant therein ought to have been allowed. In the instant case, it was enjoined upon the appellant to have made out a case for permanent injunction by proving the partition, which has not been done by him. The family settlement had also not been proved.

Consequently, I do not find any merit in this appeal, which stands dismissed along with miscellaneous applications.

(ANUPINDER SINGH GREWAL)
JUDGE

January 09, 2023
A.Kaundal

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No