

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

RSA No.1388 of 1989 (O&M)

Date of Decision: 03.08.2015

Deep Chand alias Deepan

.....Appellant

Versus

Gopi Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- | | |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Sudhir Mittal, Advocate,
for appellant.

Mr. Suneel Ranga, Advocate for
Mr. G.S.Hooda, Advocate,
for the respondents.

SHEKHER DHAWAN, J

Present Regular Second Appeal is against concurrent findings of both the Courts below in a suit filed at the instance of plaintiff-appellant for permanent injunction which was dismissed.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of present appeal that plaintiff Deep Chand had filed suit for permanent injunction on the ground that he was in possession over the plot in dispute, detailed in the site plan and marked with letters A. B. C. D. and shown in red colour in the site plan.

Earlier the said plot was being used by his forefathers to store wheat husk etc. Now he has constructed a room, set up a crusher and enclosed the same with wires. Defendants are not having any right over the property in dispute but trying to interfere in his possession and as such prayer for permanent injunction.

4. Defendants contested the suit therefore taking the plea that plaintiff is neither the owner nor in possession over the property in dispute. Even the description of the plot has not been given correctly. In fact the plot in dispute is ancestral property. The same has not been finally divided between co-sharers. Suit for permanent injunction at the instance of plaintiff is not maintainable against the defendants.

5. Learned Court of first instance returned the findings that plaintiff has not been able to prove that he is in exclusive owner or in exclusive possession over the disputed property. However defendant is co-owner in the same and they are in co-possession. Resultantly suit was dismissed. First appeal filed by plaintiff was dismissed by First Appellate Court with the same observation that plaintiff is only one of the co-sharer and he cannot succeed unless and until he impleads all the descendants of their common ancestor Bhagmal and seek partition.

6. Learned counsel for the appellant took the plea that both the Courts below have ignored the fact that plaintiff is in established possession. The suit property and such findings of both the Courts below are liable to be reversed.

7. Learned counsel for respondents took the plea that there are no grounds for interference in the findings recorded by Courts below and appeal deserved to be dismissed.

8. Having considered the submissions made by learned counsel for both the parties and material and evidence available on file this Court is of the considered view that both the Courts below have recorded concurrent findings of facts that plaintiff is not proved to be exclusive owner or in exclusive possession over the suit property. The said concurrent findings of fact does not involve any substantial question of law calling for interference by this Court by way of present Regular Second Appeal. Such a law was laid down by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (dead) by LRs., 2001(3) SCC 179** that if concurrent findings recorded by both the Courts below and there being no substantial question of law involved in the case, Regular Second Appeal is not maintainable as per provisions of Section 100 of Code of Civil Procedure.

9. In view of the above present Regular Second Appeal being without any merits stand dismissed.

(SHEKHER DHAWAN)
JUDGE

August 03, 2015

msd