

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

RSA No.1310 of 2010(O&M)
Date of decision: 22.01.2015

Raj Singh and another

...Appellants

Versus

Satyawan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Navneet Singh, Advocate,
for the appellants.
Mr. Amit Kumar Goyal, Advocate,
for respondent No.1

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed and the counter claim preferred by the defendants was decreed by the trial court vide judgment and decree dated 19.04.2008. Appeal preferred against the said decree failed and was dismissed on 27.11.2009. This is how, plaintiffs are before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a decree for injunction, restraining defendants from interfering in the portion marked ABCD, shown in the site plan. And also from closing the windows, doors and drain etc.

in the southern wall of their house. In short, it was averred by the plaintiffs, that they were owners in possession of the property shown with letters ABCD, in the site plan, which includes Sahan (courtyard) of the plaintiffs, shown with letters ABEF. It was maintained that defendants had no right, title or interest in the suit property. As the defendants intended to encroach upon the suit land, thus, the suit.

In defence, it was pleaded, inter alia, that the plaintiffs were neither owners nor in possession of the suit property. In fact, plaintiffs had encroached upon a part of plot No.10 that belonged to the defendants. And was allotted to their great grandfather Shri Siri Chand. Accordingly, plaintiffs had illegally and unauthorizedly opened their doors and windows towards plot No.10. Dimensions set out in the site plan, produced by the plaintiffs, were alleged to be incorrect. In fact, plaintiffs had encroached upon the disputed portion about three years ago. By way of counter claim, it was claimed that as the plaintiffs had encroached upon a port of plot No.10 and were thus, in unlawful possession of a portion marked by letters ABEF, in the site plan, appended with the counter claim, defendants were entitled to a decree for possession qua the said portion and also for mandatory injunction for removing doors and water outlets that were opened by the plaintiffs towards the disputed site.

Trial court, on a consideration of the matter in issue and the evidence on record, found that plaintiff No.1 had admitted in his cross-examination that plot No.10 was situated in the southern side of plot No.9. He also testified that plot No.10 was allotted to the ancestors of the defendants. The report of the local commissioner proved that the plaintiffs had encroached upon a part of plot No.10, owned by the defendants, to the extent of 16 feet on the eastern side, 3 feet on the western side and 107 feet each on the northern and southern side. That being so, plaintiffs were found in unlawful possession of a part of plot No.10, to the extent, indicated in the report of the local commissioner. Defendants, being owners of the disputed site, were held entitled to the decree for possession and also for a decree for mandatory injunction. Resultantly, suit filed by the plaintiffs was dismissed and the counter claim was accepted.

Being aggrieved against the said decree, plaintiffs preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellants at length and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiffs to be entitled to a decree for permanent injunction, there were required to prove that the disputed portion was indeed a part of plot No.9, owned by them. Concededly, defendants happened to be the owners in possession of plot No.10. The short issue to be determined by the courts below was as to whether the disputed site be that ABEF or CDEF, formed part of plot No.9, owned by the plaintiffs or plot No.10, that admittedly belonged to the defendants? Report submitted by the local commissioner revealed that the plaintiffs had indeed encroached upon a portion of plot No.10, to the extent of 16 feet on the eastern side, 3 feet on the western side and 107 feet each on the northern and southern side. Concededly, neither the plaintiffs filed any objection against the said report nor the local commissioner was sought to be cross-examined, as regards the validity and veracity of the said report. Thus, plaintiffs having been found to be in unlawful possession of a part of

plot No.10 and defendants, concededly, being the owners thereof, were certainly entitled to a decree for possession. The only other way plaintiffs still could defeat the claim of the defendants, as set out against the counter claim, was by proving that they had perfected their title by way of adverse possession. Neither any such plea was set out by the plaintiffs in response to the counter claim nor any evidence was led in this regard. Learned counsel for the appellants could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

January 22, 2015
Rajan

(Arun Palli)
Judge