

In the High Court of Punjab and Haryana at Chandigarh

206

RSA-4894-2010 (O&M)

Date of decision: 26.11.2015

UJJAGAR SINGH & ORS.

.....Appellants

Versus

LACHHMAN SINGH & ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Harkaran Singh, Advocate for
Mr.B.S.Bhalla, Advocate
for the appellants.

None for the respondents.

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

Raj Mohan Singh, J.

1. Defendants are in regular second appeal against the concurrent findings of the Courts below.
2. Plaintiffs filed a suit for permanent injunction restraining the defendants from demolishing pucca walls, foundations, cutting of kikar trees and removing the roories installed by them. Restraint qua dis-possession was also sought in respect of suit land marked by letter 'ABCD', shown in red

colour in the site plan. Plaintiffs alleged that the suit land was left by their predecessors for storing manure about 50 years back and since then they were using the same without their being any hindrance. Plaintiffs further alleged that they have also constructed pucca walls on the suit land and kikar trees are also standing on the site. Plaintiffs used to keep roories on the site in question and their possession was claimed to be peaceful. One door of the house of plaintiff No.3 opens in the suit property.

3. Defendants contested the suit by alleging that the plot in question was originally having khasra No. 3653 and later on it was changed to 3167. The suit land was once owned by Palka Singh predecessor-in-interest of the defendants. Plaintiffs had no concern with the suit land.

4. After filing replication, following issues were framed by the trial Court:-

“1. Whether the plaintiffs are entitled to injunction, as prayed for ? OPP

2. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD

3. Whether the plaintiffs have no locus standi to file the present suit ? OPD

4. Whether the plaintiffs are estopped to file the present suit by their own act and conduct ? OPD

5. Relief.”

5. Parties led their respective evidence in support of their case on the aforesaid issues.

6. Learned counsel for the appellants has formulated the following questions of law in para No.10 of the grounds of appeal:-

“(i) Whether the law settled in 1997 (1) Recent Civil Reports 46 has been ignored by the Courts below in which it was held that mere an Act of throwing rubbish or refuse is a weak evidence and is not a conclusive proof of possession?

(ii) Whether the oral as well as documentary evidence has not been properly read by the Courts below?”

7. I have heard learned counsel for the appellants and have gone through the record.

8. Factum of possession over the suit land has been admitted by defendant Mohinder Singh himself, while appearing as DW-2. The specific stand of defendants-appellants was that the property in question was once described as khasra No. 3653 (old), but later on it was changed to 3167 (new) according to jamabandi for the year 1887. The subsequent revenue record viz. *Masavi* did not depict any such khasra number in existence. Admittedly, the property is situated within abadi. Categorical

stand of the plaintiffs is that this land does not bear any khasra number. Installation of roories in the property in question has been proved with reference to evidence. Once the possession of the plaintiffs is admitted by defendant No.2 himself, the existence of roories has also been admitted. No revenue record has come forth on record to establish the case of the defendants vis-a-vis existence of any such khasra number. Even Darbara Singh, while appearing as DW-1, has admitted in his cross-examination that the property was left to place roories. The report of patwari pursuant to application moved before Tehsildar also proved that the property in question is situated within lal lakeer and there is no number attached to site in question. Even the report of the Local Commissioner proved the factum of opening of gate of the house of plaintiff No.3 in the site in question. Many roories were found on the spot.

9.8. Keeping in view the nature of relief sought and availability of material on record, it is found that the plaintiffs are in established possession over the land in question. Defendants, while appearing as DW-1 and DW-2, have also admitted the factum of possession of the plaintiffs over the suit land. Question No.1 as formulated does not arise at all. Once the possession of the plaintiffs is an admitted fact, no amount of evidence, being weak type of evidence, can nullify the fact of possession of the plaintiffs over the suit land. Even though the

placing of rubbish or throwing manure in open site is a weak type of evidence, but once possession of the plaintiffs is admitted, no question much less a question as suggested by the appellants arises in the appeal. Question No.2 also does not arise inasmuch as that there is no evidence on behalf of the defendants to prove that the property in question bears any khasra number as it exists within lal lakeer of the abadi. Defendants could not produce on record any material to show that the impugned judgments and decrees are the result of misreading of evidence or having suffered with any perversity.

10. In view of above, this Court does not find any ambiguity in the impugned judgments and decrees of the Courts below and the present appeal is hereby dismissed.

(RAJ MOHAN SINGH)
JUDGE

November 26, 2015

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