

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4346 of 2011

Date of Decision.31.08.2015

Chand Singh and another

.....Appellants

Versus

Surender @ Sunder and another

.....Respondents

Present: Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The plaintiffs sought for injunction complaining that they had put up a construction EFGD in their own property held by them ancestrally. The contention by the defendants was that it was a part of passage and the plaintiffs were trying to usurp a passage and put up construction and that the injunction sought for ought not to be granted. The trial Court found that the plaintiffs had not established their entitlement to the property by documentary evidence and also drew an adverse inference on the fact that the plaintiffs did not examine even a mason to show as to how he had put up construction and when it was done. The plaintiffs would say that the construction came up somewhere in the year 1998, that is, nearly 8 years prior to the institution of the suit. While the defendants would deny the construction with their own plan, even the plan by the defendants showed the existence of room in

respect of which the plaintiffs were seeking for injunction. The

draftsman who had prepared it was also examined. The Court found that the plaintiffs who had sought for injunction had failed to prove that they were entitled to the area where they had sought for injunction and declined the relief. The Appellate Court also affirmed the same.

2. Learned Senior Counsel appearing on behalf of the plaintiffs would state that the suit was merely for injunction and the issue of title was not involved. If the plaintiffs were shown to be in possession of property where they had also put up construction, the Court ought not to have refused the relief of injunction.

3. I must observe that in suit for injunction, plaintiffs must prove not merely a possession but must also state that their own possession was lawful. Even an unlawful possessor can hold his possession leaving the defendant to come with his own suit provided the defendant was trying to assert a right in himself. Here is a case where the Courts have found that it is a passage in respect of which the plaintiffs have no absolute right and have declined the relief of injunction on the ground that the plaintiffs' occupation at that stage was unauthorized. An unauthorized occupant to have the benefit of injunction cannot be supported, especially if the continuance of possession meant obstruction of a pathway which would constitute nuisance. The Court was justified in declining the relief of injunction under such a circumstance.

4. There is no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 31, 2015

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