

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1728 of 2012 (O&M)
Date of decision: 7.4.2015

Kaka Singh and others

.. Appellants

v.

Harpinder Kaur and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. H. S. Bhullar, Advocate for the appellants.
Mr. L. S. Mann, Advocate for respondents No. 1 to 6.

...

Rajesh Bindal J.

The plaintiffs are before this court against concurrent findings of fact recorded by both the courts below, whereby the suit filed by them for declaration as owners in possession of the property in dispute with further relief of permanent injunction, was dismissed.

In the case in hand, the appellants-plaintiffs filed the suit with the plea that they are owners in possession of the area behind their residential house marked by letters 'ABCD' in the plan attached with the plaint. They claimed themselves to be owners in possession of the property from the time of their forefathers. The suit property is within *lal lakir*. As the respondents-defendants wanted to grab the property, the suit was filed.

The case set up by the respondents-defendants was that the suit property is part and parcel of khasra No. 32//14 and 15 owned and possessed by them on which they have already constructed their residential house. Both the courts below concurrently found that the appellants had not been able to prove either their ownership or possession on the property in dispute, hence, dismissed the suit.

Learned counsel for the appellants, while not claiming the relief of declaration as owners of the property in dispute, submitted that as they are in possession of the property, they are entitled to the relief of permanent injunction to protect their possession and enjoyment of the property as the same is being used by them. He further submitted that the respondents have not been able to prove that the suit property is part and parcel of khasra No. 32//14 and 15, as claimed by them.

On the other hand, learned counsel for the respondents submitted that the property in dispute is forming part of Khasra No. 32//14 and 15, which was even proved by the report of the Local Commissioner. The appellants have not been able to prove their possession on the suit property, hence, cannot claim that the same deserves to be protected. Their effort is merely to grab the property, which is a panchayat land.

Heard learned counsel for the parties and perused the paper book.

The only relief being claimed by the appellants is regarding injunction to protect their possession and enjoyment on the property in dispute. The same was in fact demolished by the evidence led by the appellants themselves. The suit property is lying at the back of the house of the appellants. It is an open area. It has come in statement of PW5-Gurdarshan Singh, Halqa Kanungo, that the appellants do not have any door towards the side, on which the property is situated, which could indicate that they are in possession thereof and are using the same. Merely some windows, ventilators or patnalas have been shown towards the suit property, which could not entitle them the relief of permanent injunction. Even PW2-Malkiat Singh in his cross-examination admitted that the suit property is shamlat deh and further that appellant-Kaka Singh and Bal Kishan had opened two windows and ventilators towards the suit property.

The aforesaid material on record clearly established that effort of the appellants was to grab shamlat deh property and they had not been able to prove their claim of ownership and while leaving the same laid stress for relief of injunction. Even that has rightly been declined to them by both the courts below.

No substantial question of law arises. The appeal is, accordingly, dismissed.

(Rajesh Bindal)
Judge

7.4.2015
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