

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

CM No.6454-C- 2012 and
RSA No. 2293 of 2012 (O&M)
Date of decision 06.08. 2015.

Ishar Kaur

..... Appellant.

versus

Amrik Singh and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Parties are also present in person.
Mr. Arvinder Singh, Advocate for the appellant.
Mr. T.P.S.Makkar, Advocate for the respondents.

K.C.PURI, J.

Plaintiff has directed the regular second appeal against the judgment and decree dated 21.02.2012 passed by Shri H.P.S.Mahal, District Judge, Mansa vide which the appeal preferred by the defendant against the judgment and decree dated 20.08.2011 passed by Shri Deepak Kumar Choudhary, Additional Civil Judge (Senior Division), Budhlada was accepted after setting aside the judgment and decree dated 20.08.2011 and the suit of the plaintiff for permanent injunction was dismissed.

2. Briefly stated the plaintiff filed suit for permanent injunction restraining the defendants from having peaceful possession of the plaintiff. It is alleged that suit land is located within the lallakeer and is being used by her for storing roories, cow dung cakes, tethering her cattle and she had also planted 3-4 kikkar trees. The defendants have no concern with the suit property and they are threatening to forcibly dispossess the plaintiff for which they have no legal right. Hence the suit for injunction.

3. The suit was contested by the defendants and defendant No.1 filed written statement and took up legal objections that the plaintiff has not come to the Court with clean hands in as much as the defendant No.1 is owner in possession of the suit property, over which he had stored roories and tethers his buffaloes there ; suit is not maintainable in the present form; plaintiff having no right to file the present suit and the same is liable to be dismissed.

4. Defendant Nos.2 and 3 filed their separate written statement and it is alleged that they are owners in possession over the suit property which is being used by them for storing roories and also for tethering their buffaloes. They have their houses adjacent to the suit property and on 17.1.2006 Subhash Chander Patwari had given report to the Panchayat and respectable of the village and according to that report, the answering defendants are in possession of the suit property. It is also alleged that suit is not maintainable in the present form; plaintiff has no right to file the present suit and the same is liable to be dismissed with costs. On merits, defendants No.2 and 3 denied all the averments and prayed for dismissal of

the suit.

5. Separate replications to the written statements were filed. From the pleadings of the parties following issues were framed :-

1. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for ? OPP
2. Whether the plaintiff has filed this suit on the basis of false facts ?OPD
3. Whether the suit is not maintainable ?OPD
4. Whether the plaintiff has got no cause of action and locus standi to file the present suit ? OPD
5. Relief.

6. In order to prove his case, plaintiff herself appeared as PW-1 as her own witness and also examined Gian Singh as PW-2 and Baldev Singh as PW-3 but both these witnesses were not put to cross-examine and as such their testimony is inadmissible for the decision of the present case. Plaintiff has also examined in rebuttal Narotam Singh as PW-4. On the other hand defendant Amrik Singh as one of the defendants stepped into the witness box as DW-1 and also examined Baljinder Sharma, Architect as DW-2.

7. The trial Court returned findings on issue No.1 in favour of plaintiff and against the defendants. Issue Nos.2 to 4 were also decided in favour of the plaintiff and consequently suit of the plaintiff was decreed vide judgment and decree dated 20.08.2011.

8. Feeling dissatisfied with the judgment and decree dated 20.08.2011, defendants preferred first appeal before learned District Judge, Mansa. The learned District Judge, Mansa vide judgment and decree dated

21.02.2012, accepted the appeal of the defendants and suit of the plaintiff was dismissed by reversing the findings on issue No.1 regarding possession of the plaintiff.

9. Feeling dissatisfied with the aforesaid judgment and decree dated 21.02.2012 , the present regular second appeal has been preferred by the plaintiff-appellant.

10. The appellants in paragraph No.07 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (a) Whether the Ld. Appellate Court has ignored a substantive piece of evidence regarding the possession of the suit property by the Appellant thereby causing a grave injustice to the Appellant which has given rise to the said substantial question of law .?
- (b) Whether the evidence lead by the Appellant before the Ld. Trial Court is enough to establish her possession on the suit property ?
- (c) Whether the appellant has successfully established her possession over the suit property ?

11. I have heard learned counsel for the parties and have gone through the records of the case.

12. This Court vide order dated May 30, 2012 observed as under :-

“ The suit of the plaintiff-appellant regarding the property situated in Lal Lakeer, was decreed by the trial Court for injunction. The lower appellate court has dismissed the suit, on an appeal filed by the defendants. It is apparent that the plaintiff has claimed her possession over the land in Lal Lakeer,

which is allegedly used by her for storing roories, cow dung cakes etc. besides having planted $\frac{3}{4}$ kikkar trees. The manner in which the property in dispute is being used, prima facie does not establish the actual possession of the plaintiff-appellant.

Let counsel for the plaintiff-appellant make available copies of the statements made by the plaintiff's witnesses, in the interest of justice, for enabling the court to form an opinion whether the plaintiff-appellant is entitled to permanent injunction regarding suit property.

Adjourned to 30.7.2012.”

	Sd/-
May 30, 2012	(M.M.S.BEDI)
TSM	JUDGE

13. In compliance to that, the appellant has placed on record copies of statements of plaintiff and PW-4 Narotam Singh.

14. Learned counsel for the appellant has submitted that it is a mere suit for permanent injunction and the possession has to be determined. The trial Court has decreed the suit of the plaintiff by holding possession of the plaintiff over the suit land. The defendants have claimed to be the owners in possession but have failed to produce any documentary evidence on the record in support thereto. The defendants have failed to prove their ownership and possession. Plaintiff Ishar Kaur herself appeared and has stated that she is in possession of the suit property. Her testimony is corroborated by PW-4 Narotam Singh. The First Appellate Court has relied upon the report of the Kanungo Ex.D-1, the said report cannot be

considered as said Kanungo has not been produced in the Court. So, the judgment and decree passed by the First Appellate Court is based upon conjectures and surmises and is liable to be set aside and the judgment and decree of the trial Court is liable to be restored. The learned trial Court has decreed the suit of the plaintiff on the ground that defendants have failed to prove their ownership.

15. I have considered the said submissions but do not find any force in that submissions.

16. The First Appellate Court has rightly held that plaintiff has to prove her case to get injunction. It emerges out from the evidence available on the file that house of defendants adjoins the disputed plot whereas the house of plaintiff is away from the plot. No doubt, at one stage, plaintiff has pleaded that street intervenes the houses of the defendants and plot in question. It is settled principles of law that in a suit for permanent injunction, the plaintiff has to prove his or her possession. The plaintiff cannot derive the benefit from the weaknesses of the defendants. The defendants may not be owner of the suit property but in spite of that plaintiff has to prove her possession. From the close scrutiny of the statement of plaintiff, it is revealed that she has alleged that 3-4 trees are standing in the land. She kept manure pits and cow dung cakes at the site in dispute. Dry cow dung cakes are also there and she is tethering cattle in the suit property. This Court vide order dated 30.5.2012, referred to above, has rightly held that by mere storing roories, (manure pits) cow dung cakes and planting 3-4 kikkar trees, do not prove the possession of a party. No other

overt-act on behalf of the appellant in respect of the suit property has been alleged. The other evidence on the record is in the shape of statement of Narautam Singh PW-4. From the close scrutiny of his statement, it is revealed that he has stated that land is lying vacant, Subhash Chander remained Patwari in the village and Jagdev Singh was the Sarpanch and Ex.D-1 is the report prepared by Subhash Chand, which has been signed by him along with others. In document Ex.D-1, possession of defendants has been shown. So, the finding of fact recorded by the Appellate Court that plaintiff has failed to prove her possession, remained unassailable. There is nothing on file that judgment and decree of First Appellate Court is the result of misreading and misinterpreting the evidence on the file. There is nothing on the file that judgment and decree of the Appellate Court is perverse.

17. So, in view of the above discussion, I have no hesitation in holding that no question of law has arisen in the present appeal.

18. Consequently, the appeal is meritless and the same stands dismissed.

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19. In view of above decision in the regular second appeal, the present misc. application stands dismissed as infructuous.

20. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 06 , 2015

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