

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.624 of 2011 (O&M)

Date of Decision: August 17, 2015

Alimuddin

...Appellant

Versus

Fazru & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Lokesh Sinhal, Advocate,
for the appellant.

Mr.Sanjay Vij, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the impugned judgment and decree dated 18.12.2010 passed by the Lower Appellate Court, whereby the judgment and decree dated 17.12.2009 passed by the trial Court granting decree for permanent injunction restraining the defendants perpetually from interfering in peaceful possession, use and occupation of the plaintiff over residential plot bearing Ghar No.355, Ahata No.169, situated within the revenue estate of Village Moolthan, Tehsil Ferozepur Jhirka, District Mewat, has been set-aside.

Mr.Lokesh Sinhal, learned counsel appearing on behalf of the appellant-plaintiff submits that the Lower Appellate Court has committed an

illegality and perversity in accepting the appeal of the defendant-respondents on the premise that the appellant-plaintiff had failed to produce on record the demarcation report and both the site plans and further for the first time stated in the evidence that Chand Singh and Chand Khan is the one and the same person. He further submits that the findings are not only erroneous, but perverse for the reason that once the identification of the property has been given by number, there was no need to get the property demarcated, much less, placing on record the site plan would not be necessary in view of the provisions of Order 7 Rule 3 of the Civil Procedure Code. Even the Lower Appellate Court has erroneously not taken into consideration the averments made in the replication, wherein it was categorically averred/pleaded that Chand Singh and Chand Khan is the one and the same person and, therefore, the evidence led by the appellant-plaintiff was not beyond pleadings.

Mr.Sanjay Vij, learned counsel appearing on behalf of the respondent-defendants submits that the appellant-plaintiff has to stand on his own legs. Plaintiff has miserably failed to prove the identity of the property as no documentary evidence has been proved on record and the documents placed on record Ex.P1 to Ex.P7 have only been tendered as noticed in the zimni order dated 10.11.2009, which were seriously objected to at that stage and, therefore, mere exhibition of the documents would not dispense with its proof. The entire documentary evidence cannot be taken into evidence and, therefore, the suit is liable to be dismissed, much less, the present appeal.

I have heard the learned counsel for the parties and appraised

the paper book.

The law in proving and exhibiting the documents is no longer *res integra*. In order to lend support to the aforementioned contention, I intend to rely upon the judgment of the Hon'ble Supreme Court in **Sait Tarajee Khimchand and other Versus Yelamarti Satyam and others**, AIR 1971 (SC) 1865 and various other judgments, wherein it has been held that mere exhibition of the documents would not dispense with its proof. Ex.P1 and Ex.P2 (Khatanama) and other revenue record Ex.P3 and Ex.P4 have only been tendered as per the zimni order dated 10.11.2009, which reads thus:-

“No PW is present today. Adjournment requested, which is opposed. Ld.counsel for the plaintiff has closed his evidence after tendering the documents Ex.P-1 to Ex.P-7. Now, to come up on 13-11-09 for DWs at own responsibility.”

Even from the perusal of the statement recorded by the learned counsel for the plaintiff, it is evident that the exhibition of the documents was seriously objected to and the plaintiff failed to remove the objections by proving and examining the concerned witnesses from the department regarding the genuineness and authenticity of the documents. Even otherwise, no such application was moved for taking the aforementioned evidence on record by way of secondary evidence.

It is now well settled law that the plaintiff has to stand on his own legs and not to find fault with the weak defence of the respondent-defendants. Perpetual injunction has been sought on the basis of the fact that Chand Singh was the owner of the suit property. No evidence has been placed on record to show that Chand Singh and Chand Khan is the one and

the same person, except the averments and the bald statement in the evidence. Even otherwise, on perusal of Ex.P2, it is evident that Chand Khan was another person, though his parentage was different. Be that as it may, the fact remains that in the absence of evidence, the appellant-plaintiff cannot succeed and seek injunction against the respondent-defendants. The findings rendered by the Lower Appellate Court are based on appreciation of oral and documentary evidence. There is no illegality and perversity, much less, the appeal does not involve any substantial question of law, to be adjudicated in the present appeal.

The appeal is accordingly dismissed.

August 17, 2015
ramesh

(AMIT RAWAL)
JUDGE