

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

RSA No. 5406 of 2012 (O&M)

Date of decision : 21.8.2015

Ganpat and others

... Appellants

versus

Om Parkash

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Prateek Rathee, Advocate for
Mr. Pravindra Singh Chauhan, Advocate, for the appellants.

Rajesh Bindal, J.

The defendants have approached this Court impugning the judgments and decrees of both the Courts below whereby the suit filed by the respondent-plaintiff for permanent injunction restraining the defendants from interfering in his ownership and possession over the property in dispute was decreed.

In the case in hand, the respondent-plaintiff filed the suit for permanent injunction on the ground that property in dispute, which was gifted by Ram Chander in favour of the plaintiff vide gift deed no.197 dated 20.6.2003, was earlier used by his father Rati Ram for tethering animals. After registration of gift deed, the property in dispute was in possession of the plaintiff. The defendants have no concern with the suit property but they wanted to grab the same. After considering evidence led by the parties, the suit was decreed by the learned Court below. The appeal filed by the defendants was dismissed by the learned Lower Appellate Court. Hence, the present appeal.

The case of the plaintiff that he is in possession of the suit property has been proved by him by leading cogent and convincing evidence. PW3 Mahender deposed that the suit property was ancestral in the hands of Ram Chander, brother of Rati Ram. The suit property came in

the share of Ram Chander. Rati Ram was tethering his animals in the suit land with permission from Ram Chander. The suit land was gifted by Ram Chander to the plaintiff, who is now tethering animals. To the same effect are the deposition of other witnesses produced by the plaintiff. On the other hand, the defendants- appellants failed to show their possession over the suit property. Even the witnesses produced by them have not corroborated their version. DW1 Raj Pal draftsman in his cross-examination could not tell whether animal was being tethered at the spot. This witness has also admitted that he never visited the spot for preparation of map. Jai Lal was produced as DW2, who admitted in his cross-examination that gift deed in respect of the suit land is in favour of the plaintiff. He has pleaded ignorance about the construction of the wall over the suit property. He could not tell in his cross-examination that who is tethering animals.

The onus of the core issue whether the plaintiff was owner in possession of the suit property was on the plaintiff and by leading evidence he discharged the same. Nothing has been pointed by learned counsel for the appellants, which has been overlooked by both the Courts below, in reaching the conclusion.

In view of my aforesaid discussions, in my opinion, there is no illegality committed by the learned Courts below in decreeing the suit filed by the respondent-plaintiff. The findings cannot be said to be perverse. No substantial question of law arises. The appeal is accordingly dismissed.

21.8.2015
vs

(Rajesh Bindal)
Judge