

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

RSA No.98 of 2012 (O&M)
Date of Decision.18.08.2015

Dr. Vijay Kumar and another

.....Appellants

Versus

Santosh Rani and others

.....Respondents

Present: Mr. Kuldip Sanwal, 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 had sought for injunction contending that a sale made by the plaintiffs' father to the defendants' predecessor was in respect of two marlas of land but there was a joint khewatdari. The father had only a right to two marlas of land and the defendants as purchasers were attempting to put up construction larger than the extent which they had purchased. The plaintiffs had sought for injunction from putting up any construction by the defendants larger than the extent they had purchased i.e. two marlas of land.

2. The counsel for the appellants took a plea that the property described as two marlas of land was set forth within the boundaries on all sides and if there is discrepancy between boundaries, the extent of boundaries will prevail. The counsel would refer to a judgment of this Court in **Kali Saran Vs. Hari Ram and another Vol. LIX-1957 PLR 419.**

The Court below has referred to the same but observed that the

plaintiffs had been shown to be joint owners in the same *khata* and the mutation entries had also allowed for only two marlas as entered for the benefit of the defendants. The defendants claimed the extent larger than what they purchased and what the revenue entries provided for. The Court found that the discrepancy was not shown to have existed in the sale deed and if the extent mentioned was clear with reference to 2 marlas of land, they would be entitled to the said extent. The Court did not, therefore, find any use for reference to the said judgment.

3. I do not find that there is any error in the judgments of the Courts below. The plaintiffs as joint owners in respect of the same property specified in the khewat were seeking for injunction against the defendants from putting up any construction or enjoying any extent of property larger than two marlas of land. I asked the counsel as to what is exactly the property which was comprised within the boundaries. The counsel is unable to respond to the question. I examined the pleadings as brought out in the judgment and there is no reference anywhere in the judgment that the defendants were in possession of extent in excess of two marlas of land. The reliance on the fact that boundaries would prevail for extent cannot, therefore, be applicable.

4. The counsel would also refer to me a judgment of the Supreme Court in *Anathula Sudhakar Vs. P. Buchi reddy (dead) by LRs and others AIR 2008 SCC 2033* where the Supreme Court was holding that in a suit for permanent injunction or declaration, the plaintiff has to prove that he was actually in possession. The said judgment, while referring to Section 38 of the Specific Relief Act set out the contingencies in which the suit for permanent injunction could be

maintained. The Court was holding that a person who is out of possession cannot seek for relief of injunction simpliciter without claiming the relief of possession. The prayer in the suit does not warrant an application of the said judgment. I have already noted that the plaintiff was seeking for an injunction restraining the defendants from encroaching upon or putting up any construction in the property in khewat No.543 of which the plaintiffs were co-owners and recorded as such and wanted an injunction restraining the defendants from putting up any construction beyond an area of two marlas purchased by the defendants. The plaintiffs were, therefore, seeking for a restraint in respect of property of which they were shown to be owners in the records and they were restricting the relief of injunction only to a property in excess to what was purchased by the defendants.

5. There is nothing wrong about the reliefs granted by the Courts below and there is no error for interference in the second appeal. There is no substantial question of law involved in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 18, 2015
Pankaj*