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

**RSA No.135 of 2013 (O&M)
Date of Decision: 11.12.2015**

Balwinder Singh

.....Appellant

Vs

Harnek Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Gupta, Advocate
for the appellant.

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?*

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction.

[2]. Plaintiff filed suit for permanent injunction in respect of plot marked ABDE as shown in the site plan on the ground that he is in peaceful possession of the plot and defendants be restrained from constructing wall between point B and D and for directing the defendant No.1 to reconstruct the wall from point A to B. The plaintiff has furnished rough site plan showing three plots in a row in North-South direction with the plot in dispute on

northern side shown as ABDE.

[3]. Plaintiff alleged that she is resident of village and is in possession of her residential house and agricultural land as well as plot in dispute. Three points have been referred i.e. marks X, Y and Z (disputed plot). Plot mark-X was in the ownership of the plaintiff. The plot mark-Y has been got by plaintiff in exchange with Joginder Singh and exchange deed was executed on 08.05.1973 in the *Bahi* in the presence of Sarpanch Balwant Singh, Gram Panchayat Jassowal. The plot mark-Z in dispute was purchased from Harnam Singh and in this regard a writing dated 28.06.1975 was executed by Harnam Singh which was witnessed by his son Pritam Singh. In this way plaintiff alleged that she is owner of all these plots marked as X, Y and Z measuring 85 feet in length and 18 feet in width and 35 feet in width on other side.

[4]. Plaintiff further alleged that defendants No.1 Harnek Singh forcibly demolished the joint wall between the portion A and B and wanted to construct a wall between B to D so as to have a passage of his house towards eastern side leading to public street.

[5]. Plaintiff alleged that defendant No.1 is required to re-construct the wall between portion A and B and is also required to be restrained from constructing the wall between

portion B and D and not to have forcible possession of the disputed plot ABDE.

[6]. Defendants contested the suit. Defendant No.2 admitted that his father was owner of the disputed plot mark-Z measuring 18' x 40' and earlier it was a *toba*/pond within the *abadi* area. Defendant No.2 raised averment that the plot was sold by his father to the plaintiff on 28.06.1975 and since then plaintiff is in possession of the same. The defendant No..2 also raised the plea that plaintiff has raised wall on western side towards the house of defendant No.1 and plaintiff was already in possession of the plot mark-X. There is a street on the southern and western side of the said plot. Plaintiff got her plot exchanged with Joginder Singh in the year 1973, in this manner plaintiff is in exclusive possession of the disputed plot. Defendant No.2 has no passage on the eastern side, but he forcibly demolished the wall from point A and B.

[7]. The claim of the plaintiff has been resisted by the defendant No.1 Harnek Singh by denying the averments made in the plaint. He claimed that the property is portion of Khasra No.1027/472 which is owned and possessed by him along with his brothers. The plaintiff has intentionally not mentioned the *khasra* number of the property in question. Defendant No.1 claimed that plot mark-Z and some part of plot mark-Y are

owned and possessed by him. Defendant No.1 also alleged that plaintiff wants to grab the property forcibly with the help of some disgruntle elements. The matter was reported to the Police.

[8]. After filing of replication, trial Court framed the following issues:-

- “1. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.*
2. *Whether the suit is not maintainable in the present form? OPD.*
3. *Whether the plaintiff has got no locus standi to file the present suit? OPD*
4. *Relief.”*

[9]. Both the parties led their respective evidence to prove their case on the aforesaid issues.

[10]. Trial Court held that the suit being simpliciter suit for permanent injunction, the Court is not obliged to decided the title of the parties in the disputed property, however discussion in respect of title is inevitable so as to establish the facts for effective adjudication of the *lis*.

[11]. The dispute between the parties revolves around plot mark-Z as depicted in the site plan Ex.P-1 and shown in scaled site plan Ex.P-5 towards southern side. The stress has been made on writing Ex.P-3, wherein the plot has not been properly described, nor any site plan has been shown therein. The

situation of the plot has not been mentioned in the writing Ex.P-3, nor any evidence has come to prove that Harnam Singh was the original owner of this property and has passed the valid title to the plaintiff. The writing Ex.P-3 is not sufficient to prove the location of the suit property viz-a-viz. ownership of the plaintiff over the plot mark-Z. Recital in the writing only shows that there is a pit adjoining to the property of Kalia. The witness examined by plaintiff i.e. Balwinder Singh PW-1 and Karnail Singh PW-3 do not advance the case of the plaintiff viz-a-viz. the suit land.

[12]. Balwinder Singh PW-1 has deposed that it is wrong to suggest that the property in question form part of *Khasra* No.1027/472 which is owned and possessed by defendant No.1 along with his other brothers. Similarly Karnail Singh PW-3 also deposed that he does not know about falling of suit land within *Khasra* No.1027/472.

[13]. From the discussion of the plaintiff's evidence, the trial Court held that the suit property is comprised in specific *khasra* number and it was for the plaintiff to describe the suit property in the plaint in proper manner with reference to dimensions and *khasra* numbers. Since the plaintiff has not described the property with necessary details and only described the property as part of the *abadi deh* i.e. residential area of the village,

therefore, concealment on the part of the plaintiff has taken place which disentitle her from claiming discretionary relief of injunction.

[14]. The plaintiff's evidence is conspicuous as he did not mention necessary particulars of the suit land in plaint, but the defendant No.1 apart from making oral deposition has brought on record certified copy of *jamabandi* for the year 2008-09 Ex.D-1 which describes the land measuring 5 *Marlas* as *gair mumkin abadi* area comprised in *Khasra* No.1027/472, which is owned and possessed by the defendant No.1 and others. Defendant No.1 has also brought on record site plan Ex.D-2 which has been prepared by the *Halqa Patwari* proving the situation of the land fully in consonance with the scaled site plan Ex.P5.

[15]. The property depicted by plot mark-Z in the site plan Ex.P-1 is a part of *khasra* number as per revenue record, such property is proved to be owned and possessed by defendant No.1 and other co-sharers.

[16]. In the light of finding recorded under issue No.1, both the Courts below have concurrently held that plaintiff has failed to prove his case on the basis of preponderance of evidence. Trial Court dismissed the suit and the plaintiff also remained unsuccessful before the lower Appellate Court.

[17]. In this appeal also, the evidence which has been

discussed by the Courts below could not be diluted by learned counsel for the appellant by way of any cogent evidence. It could not be pointed out as to how the findings recorded by both the Courts below are perverse or the result of misreading of evidence.

[18]. The question No.1 as formulated by the appellant in para No.6 of the grounds of appeal is a pure question of fact and does not advance the case of the plaintiff in any manner. In a suit for permanent injunction, possessory right has to be appreciated, even no evidence has come forth on behalf of plaintiff to suggest that the question No.1 really involves in the present case or not?

[19]. Similarly question No.2 has to be answered in the same way. In a question of possession which is *sine qua non* for determining relief in a suit for permanent injunction, the title is wholly inconsequential. The plaintiff has not produced on record any such evidence as against the evidence led by the defendant No.1 to prove that the plot mark-Z has no *khasra* number as proved by defendant No.1 and is not owned and possessed by the defendant No.1.

[20]. Questions No.3 and 4 have to be answered in negative against the plaintiff. Possessory right of the defendant No.1 has been established with reference to evidence on record and

defendant No.1 is proved to be owner and in possession of the same.

[21]. Having deliberated upon the arguments raised at the Bar, which are the repetition of the points taken before the Courts below, this Court finds that no interference is required to be made in this Regular Second Appeal, consequently the appeal is dismissed.

December 11, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**