

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No. 5488-C of 2013 in/and
RSA No. 2058 of 2013 (O/M)
Date of decision : 29.9.2015

Mohinder Pal Garg

..... Appellant

Versus

Murli Manohar alias Manohar Lal and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jasbir Rattan and Mr. Vivek Rattan, Advocates,
for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

CM No. 5488-C of 2013

There is delay of 19 days in re-filing the present appeal.

For the reasons mentioned in the application, which is supported by the affidavit of the appellant, the delay of 19 days in re-filing the present appeal is condoned.

Application is accordingly disposed of.

Main case

Impugned in the present regular second appeal is judgment and decree dated 18.10.2012, passed by the learned

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Additional District Judge, Sangrur, affirming the judgment and decree dated 12.6.2009, passed by the learned Additional Civil Judge (Senior Division), Sangrur, vide which the suit of the plaintiff/appellant herein, was dismissed.

The brief facts of the case are that the plaintiff/appellant had initially filed a suit for permanent injunction, which was later on converted into suit for possession after receipt of report of the local commissioner. It was stated in the original suit that originally Net Ram was the owner of the house and that in a partition, which took place seven years earlier, he divided his properties amongst his three sons, namely, Mohinder Pal Garg (plaintiff No. 2/appellant), Murli Manohar and Kanti Krishan (defendants). The disputed house was given to Mohinder Pal Garg (plaintiff), whereas the other two sons were given different properties. It also comes out that during the pendency of the suit, Net Ram died and he executed a Will regarding the disputed house in favour of Mohinder Pal Garg (plaintiff).

On the other hand, the stand of the defendants was that one Chamba Ram was the original owner of the disputed house. Murli Manohar (defendant) was living with him and serving him during his life time. Chamba Ram was issueless. After the death of Chamba Ram, which took place more than 20 years back, Murli Manohar (defendant) was in continuous possession of the disputed

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property as owner. The disputed property is situated in the *lal lakeer* of the village and there is no record of his ownership.

I have heard the learned counsel for the appellant and have also carefully gone through the file.

The moot point, which goes to the root of the case is as to whether the ownership of Net Ram over the disputed house is proved. It is only thereafter that the question of partition by Net Ram and the Will executed by Net Ram in favour of Mohinder Pal Garg (plaintiff) will arise. Since the property is situated in *lal lakeer* of the village, there is no documentary proof of its ownership in the form of document of title. Therefore, only the oral evidence in this regard is to be examined. The lower Court, while discussing the evidence, found that there is no proof of ownership of Net Ram. It has also relied upon the statement made in cross examination by Darshan Singh (PW4), neighbour of the plaintiff, who admitted that previously Chamba Ram used to reside in this house and Murli Manohar (defendant) was also living with Chamba Ram alongwith his family. Murli Manohar (defendant) used to look after the said Chamba Ram. It goes to show that Chamba Ram was in possession of this house and that Murli Manohar (defendant) was living in the said house even during the lifetime of Chamba Ram and acquired the possession after the death of Chamba Ram. When there is no document of title, the possession is the best proof of ownership

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regarding the property situated within the *lal lakeer* of the village.

Learned counsel for the appellant has argued that in the report of the local commissioner, it has come out that only loose electric wiring was found and that the meter was having no connection, which shows that the meter was installed just to concoct a story of possession. However, the local commissioner also found some boxes, beddings and cow in the house. The door was opened by son of the defendant and the locks of the 'pettis' (boxes) were also opened by the son of the defendant. Moreover, the admission of Darshan Singh (PW4), neighbour of plaintiff, also proved the case of the defendant. Except the oral evidence in the form of statement of son-in-laws of Net Ram, there is no evidence that Net Ram ever acquired the possession of this house or he was the owner of this house. The findings of facts have been recorded by both the Courts below. There is no ground to interfere in the same. No question of law much less the substantial question of law arises. Hence, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

29.9.2015
sjks