

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.2610 of 2013 (O&M)

Date of Decision: 04.05.2015

Surinder Mohan

.....Appellant

Versus

Raj Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Deepak Verma, Advocate,
for appellant.

SHEKHER DHAWAN, J

Present regular second appeal filed against judgment and decree dated 06.10.2012 passed by Court of Additional District Judge, Gurdaspur whereby appeal against judgment and decree dated 10.10.2008 passed by Additional Civil Judge (SD), Gurdaspur was dismissed.

2. For the sake of convenience the parties are being referred as per their status before the Courts of first instance.

3. Detailed facts of the case have already been recapitulated in the judgments of the Courts below. However relevant facts for the purpose of decision of the present appeal that plaintiff had filed suit for permanent injunction for restraining the defendant from interfering in his possession on the plot in dispute. As per plaintiff, he is in physical possession of the said

plot for the last more than 20 years as owner and using the same as *Haveli*. However defendant No.2 alleged that he had purchased the plot from Bhola Nath though Bhola Nath had no right or title in dispute. The said Bhola Nath was not residing in the village for the last more than 20 years. Even if there is any sale deed in favour of Bhola Nath by defendant No.2, the same is illegal null and void.

4. Defendants contested the suit taking the plea that he is the owner of the plot which was given to his sister by Bhola Nath. His sister sold the same to Subash Chander s/o Parkash Chand. Plot in dispute is situated within *lal lakir*.

5. Defendant No.2 contested the suit on the grounds that plaintiff has no locus standi to file the suit as defendant No.2 is in exclusive possession of the said plot and was using the same since 21.11.1995 i.e. the date on which he had purchased the plot from Bhola Nath and prayed that suit be dismissed.

6. On these facts Court of first instance settled issues and after recording evidence and appreciating the same dismissed the suit of the plaintiff.

7. First appeal was filed before District Judge, Gurdaspur and remained unsuccessful.

8. Mr. Deepak Verma, learned counsel for the appellant took plea that Courts below have not appreciated the controversy in its prospective. An application for appointment of Local Commissioner was filed for spot inspection so as to determine the possession on the disputed property but same was not accepted by the Courts below. More so the copy of sale deed was placed on file and the Courts below did not consider the said sale deed

as well which resulted into erroneous finding and the same are liable to be set aside.

9. Having considered the submissions made by learned counsel for appellant and record available on the file. This Court is of the considered view that the present is regular second appeal against concurrent findings of both the Courts below. The factum of possession on the disputed property is a question of fact and that has already been determined and decided by the Courts below. This Court while dealing with regular second appeal did not find any substantial question of law. Courts below as regards to the plea taken by learned counsel for the appellant that the Local Commissioner was not appointed by the Court despite request having been made before the Court on this point. Certainly this was within the discretion of the Court concerned whether visit of Local Commissioner was required or sufficient evidence was available on the file to decide the controversy before the Court. If at all appellant was not satisfied with the rejection of prayer for appointment of Local Commissioner, the same should have been challenged at that stage.

10. Learned counsel for appellant has referred to cross-examination of PW-1 Parkash Singh, PW-2 Amrik Singh and PW-3 Raj Kumar whereby they were not in a position to tell the length and width of the property but they have specifically stated before the Courts below that the property was in possession of plaintiff. The testimony of witnesses cannot be discarded merely on ground that they were not in a position to tell the exact length and width of the property.

11. Moreover Courts below placed reliance upon cross-examination of defendant No.1 Surinder Singh who had admitted that Raj Kumar

plaintiff had constructed *haveli* on the disputed property and installed Hand Pump and was putting *Roori*. He had also admitted that suit property was in the possession of Raj Kumar plaintiff.

12. In view of the above the present regular second appeal is without any merit as no substantial questions of law is involved and both the Courts below have already recorded the findings of fact and the same do not call for any interference. Resultantly the present appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 04, 2015
msd