

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

Regular Second Appeal No.4716 of 2013 (O&M)
Date of decision: 14.08.2015

Jagat Singh

... Appellant

versus

Harbhajan Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Naveen Batra, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

CM No.12697-C of 2013

Exemption granted, as sought for.

Application stands disposed of.

Regular Second Appeal No.4716 of 2013

1. The suit for injunction was claimed by the plaintiff on the basis of possession of himself and his predecessors for more than 5 decades. The property was situate in abadi and it was contended that his predecessors had been shown as weavers in the year 1911-12 and later the entries had been removed. At the time of evidence, the plaintiff relied on PW1 to say that he was in possession but the

witness admitted in the cross-examination that he had been informed that the plaintiff's predecessors had been weavers but he had not himself known about it. He also stated that there was a well in the property which was used by the entire community of *adharmis* in the village. PW2 was yet another witness who was brought to support the plaintiff but after the chief-examination, he did not appear for cross-examination and, therefore, his evidence could not be accepted and had to be eschewed. PW3, who was a party, had no knowledge about the khasra number where the property was situate and the appellate court had observed that PW3 literally admitted that he did not know about the ownership and possessory rights. It was elicited in the cross-examination that in respect of the very same property, a suit had been filed through Advocate R.K.Dhanda which was dismissed. The witness wanted to explain that he had later withdrawn the suit, but without permission of the court, for filing a fresh one. If there had been abandonment of action, even a fresh suit would be barred and the court, therefore, observed that even a fresh suit for injunction was not competent. It has made reference to Order 2 Rule 2 CPC as constituting a bar but I will explain that Order 23 Rule 1 CPC is the correct provision which will bar the fresh suit if the previously instituted suit had been allowed to be dismissed as withdrawn without taking permission to file a fresh suit on the same cause of action.

2. On a point of fact of exclusive possession, the plaintiff had failed to prove his possession. On a point of law of maintainability of suit, it was not even competent. I find nothing substantial for an intervention in the second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

14.08.2015
sanjeev