

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

**RSA NO. 5060 OF 2013 (O&M)
DECIDED ON : 24.08.2015**

Hari Singh and another

... Appellants

versus

Tarlochan Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Ms. Ravinder Kaur Manaise, Advocate
for the appellant.

K. C. PURI, J.

Challenge in this appeal is to the judgment and decree dated 11.10.2013 passed by Shri Mandip Singh Dhillon, Additional District Judge, Gurdaspur, vide which the appeal preferred by the defendants-appellants against the judgment and decree dated 03.11.2011 passed by Ms. Rashmi Sharma, Civil Judge (Junior Division), Batala, was dismissed.

2. Briefly stated, Tirlochan Singh filed a suit for permanent injunction with the allegations that the suit property as mentioned in head note of the plaint was co-owned and possessed by him along with his brothers Davinder Singh and Manjit Singh. The defendants were neither co-sharers nor vendees in the suit property. However, they were threatening to dispossess the plaintiff from the suit property. They were requested many a times not to do so but in vain. Hence, the suit was filed.

3. Upon put to notice, defendants filed joint written statement denying the ownership of plaintiff over the suit property. It was further pleaded that the entries incorporated in the revenue record were illegal. It was further pleaded that the defendants are in possession over the suit property for the last more than 50 years. The other averments were denied.

4. Replication was filed reiterating the stand taken in the plaint and denying the averments made in the written statement.

5. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to permanent injunction as prayed for ?OPP
 2. Whether plaintiff has not come to the court with clean hands ? OPD
 3. Whether plaintiff has got no cause of action to file the present suit ? OPD
 4. Whether the present suit is not maintainable in the present suit ? OPD
 5. Relief.
6. The parties have led their respective evidence on the aforesaid

issues. The trial Court after appraisal of the evidence decreed the suit of the plaintiff vide judgment and decree dated 03.11.2011.

7. Feeling aggrieved, the defendants preferred First appeal. The learned District Judge, Gurdaspur vide judgment and decree dated 11.10.2013 dismissed the appeal of the defendants.

8. Feeling dissatisfied with the aforesaid judgments and decrees dated 03.11.2011 and 11.10.2013, the present regular second appeal has been directed by the defendants/appellants.

9. The appellants in paragraph No.09 of the grounds of appeal, have mentioned that following substantial questions of law have arisen in the present regular second appeal :-

1. Whether the findings of the Ld. Courts below are wrong, illegal, unjust and perverse ?
2. Whether a plaintiff, who is not in possession of the suit property can claim permanent injunction with regard to the same ?
3. Whether the Id. Trial Court has fell in error by not deciding the defendants application for appointment of local commissioner ?

10. I have heard learned counsel for the appellants and have gone through the case file.

11. Learned counsel for the appellants has submitted that it is a mere suit for permanent injunction. The plaintiff can succeed only in case he is able to prove his possession over the suit property. One of the witness of the plaintiff while appearing in the witness box has admitted that defendants are in possession and they have raised construction. Since, the

plaintiff was not in possession of the suit property, as such both the Courts below have committed grave error in decreeing the suit of the plaintiff. The local Commissioner may be appointed to find out the factual position. It is further submitted that the judgments and decrees of both the Courts below are wrong, illegal, unjust and perverse.

12. I have carefully considered the said submission but do not find any force in that submission.

13. There is concurrent finding of fact recorded by both the Courts below that plaintiff is owners in possession of the suit property. The revenue record shows his possession. Counsel for the appellants wanted to take the benefit of statement of witness of the plaintiffs but that aspect has been rightly dealt in by the First Appellate Court and it has been observed that possession admitted by the plaintiff was in respect of other property than the suit property. The local commissioner cannot be appointed in the regular second appeal to ascertain the possession. Moreover, the suit property is agricultural land. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal.

14. Consequently, the present appeal is without any merit and the same stands dismissed.

15. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 24 , 2015
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