

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

103

Regular Second Appeal No.906 of 2013 (O&M)

Date of Decision: December 18, 2015

Phula Ram

...Appellant

Versus

Bhagirath and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok Verma, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.11478-C of 2015

Prayer in this application is for permission to place on record
the certified copy of plaint dated 23.08.2013 as Annexure A-1.

Application is allowed.

Certified copy of plaint dated 23.08.2013 is taken on record as
Annexure A-1 subject to just exceptions.

RSA No.906 of 2013

Challenge in this appeal is to the judgment and decree passed
by the Additional Civil Judge (Senior Division), Sirsa, dated 20.04.2011,
whereby the suit filed by the appellant-plaintiff for declaration with
consequential relief of permanent injunction against the
respondents-defendants claiming himself to be the owner in possession of
the property in dispute in the present case measuring 3 marlas, details of
which have been mentioned in the suit, stands dismissed, appeal against
which preferred by the appellant-plaintiff has also been dismissed by the
District Judge, Sirsa, on 29.08.2012.

2. Counsel for the appellant places reliance upon the civil suit

which has now been filed by the respondents-defendants on 24.08.2013 (Annexure A-1) (which has been brought on record today) proves the possession of the property at the hands of the appellant-plaintiff. His further contention is that as per the receipt dated 08.02.1991 Exhibit P-1, a sum of ₹2,400/- was paid to the respondents-defendants for the plot in question and thereafter the appellant-plaintiff had proceeded to build a house there, where he is residing along with his family. In support of this contention, he has placed reliance upon the evidence which has been brought on record by him i.e. the statement of the witnesses as also the documents such as the *chulha* tax, the Voter Card and Ration Card as also the photographs. He contends that all this clearly proves that the appellant-plaintiff is the owner in possession of the property and, therefore, the findings recorded by the Courts below cannot sustain. He contends that even if the receipt dated 08.02.1991 Exhibit P-1 could be said to be not admissible in evidence nevertheless the possession having been established, the injunction should have been granted by the Courts below. He accordingly prays that the impugned judgments and decree be set aside and the suit of the appellant-plaintiff decreed.

3. I have considered the submissions made by learned counsel for the appellant-plaintiff and with his assistance, have gone through the impugned judgments.

4. It is not in dispute that the receipt dated 08.02.1991 Exhibit P-1 which is the basis for claiming the ownership and title over the suit property is not admissible as the same has not been got registered as per Section 17 of the Registration Act, 1908. The judgment of the Supreme Court passed in case titled as ***Suraj Lamp and Industries Private Limited Versus State of***

Haryana and another 2011 (4) Civil Court Cases 558 (S.C.) has rightly been relied upon by the learned Lower Appellate Court to discard the said document. The said document, therefore, does not confer any title on the appellant-plaintiff.

5. As regards the contention of the counsel for the appellant that the possession of the appellant-plaintiff stands established, suffice it to say that the evidence which has been brought on record, does not prove the possession of the appellant-plaintiff as none of the revenue records depicts so, rather the said records show the possession of the respondents-defendants. The house tax and the *chulha* tax receipts on which reliance has been placed, are not in the name of the appellant-plaintiff but in the name of his brother Manphul. The other documents which have been placed on record also do not relate to the property in question. In the light of these findings recorded by the Courts below which are based on proper appreciation of the pleadings and the evidence brought on record, no interference in the same is called for.

6. As regards the assertion of the counsel for the appellant that the possession of the appellant-plaintiff stands established because of the filing of the suit for possession of the plot in question by the respondent-defendant No.1 on 24.08.2013 cannot be approved as a perusal of the said suit would show that as per the pleadings in para 4 thereof, it has been asserted that the appellant herein, after the passing of the order on 29.08.2012 in this case, has encroached upon the land of the respondent-defendant on 01.08.2013 and constructed an additional *kotha* and is occupying the house and the *nohra* of the respondents-defendants unauthorizedly. This shows that the appellant-plaintiff was not in

possession of the property in dispute.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.2463-C of 2013, stands disposed of as infructuous.

December 18, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE