

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.2098 of 2015 (O&M)

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Date of decision:14.5.2015

Thuru Ram

.....Appellant

v.

Parkasho Devi

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rai Singh Chauhan , Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Thuru Ram appellant/defendant against Parkasho Devi-respondent/plaintiff challenging the impugned judgment and decree dated 17.3.2015 passed by the learned Additional District Judge (Ad hoc), Fast Track Court, Gurdaspur, allowing the appeal filed by Parkasho Devi against Thuru Ram aggrieved against the judgment and decree dated 22.7.2013 passed by learned Civil Judge (Senior Division), Gurdaspur, vide which the suit filed by her was dismissed.

The brief facts of the case are that plaintiff-Parkasho Devi filed suit for permanent injunction restraining the defendant from dispossessing her from the shop marked as 'ABCD' fully shown in the site plan attached with the plaint. It is the case of the plaintiff that previously her father, namely, Angad Ram, was proprietor of the village. Due to this, he was

allotted 3 Marlas plot from the proprietors of the 'Jumla Mushtraka Malkan'. Thereafter, the plaintiff had constructed a shop over the plot in question, as the plaintiff is the widow lady and is residing at her parental home with her father. The defendant has got no right, title or interest with the shop in question.

In the written statement, the defendant stated that Thuru Ram is the owner of the property in dispute being proprietor and there is no document to support the claim of the plaintiff to prove the ownership of the disputed shop. The other averments were mainly denied.

Both the parties produced the evidence. Learned Civil Judge (Senior Division), Gurdaspur, vide judgment and decree dated 22.7.2013 dismissed the suit of the plaintiff by holding that the plaintiff has failed to prove the possession over the disputed property. The learned Additional District Judge, Gurdaspur, in the judgment and decree dated 17.3.2015 reversed the judgment of the lower Court and decreed the suit of the plaintiff in the appeal filed by her. Aggrieved from this judgment and decree, the present regular second appeal has been filed by the appellant-defendant.

At the time of arguments, learned counsel for the appellant-defendant mainly argued that the findings of the learned Additional District Judge are incorrect and not as per evidence and the suit of the plaintiff could not be decreed because the plaintiff has failed to prove the ownership of the property.

After hearing the learned counsel for the appellant and after

going through the record, I find that the plaintiff has examined herself as PW-1, Jodh Singh as PW-2 and Subedar Jagir Singh as PW-3. On the other hand, defendant Thuru Ram examined himself as DW-1. A perusal of the findings of the learned Civil Judge (Senior Division), shows that it being a suit for permanent injunction based on possession, there is no need to decide the ownership in this case. As regards the possession, the Court held that in the Jamabandi, revenue record, name of the plaintiff is not depicted any where. The learned Civil Judge (Senior Division) also held in the judgment that defendant Thuru Ram in his cross-examination admitted that the plaintiff is in possession over the disputed shop, but simple admission of the defendant was not found sufficient to prove the case of the plaintiff. The learned Additional District Judge in appeal while appreciating the evidence on record held that the plaintiff herself as well as PW-2 Jodh Singh have supported and corroborated the version of the plaintiff and further the defendant in para 2 of the written statement has admitted that the plaintiff had constructed shop in dispute illegally without consent and has stated that the defendant is original owner. The learned Additional District Judge also discussed the cross-examination of the defendant where he admitted that the plaintiff had constructed shop in the village on 3 Marlas plot in Khasra No.240, which is common for all the village proprietors and possession of the plaintiff has been admitted by the defendant.

In view of the evidence produced by the plaintiff and supported by her witnesses and in view of the admission of the defendant himself in the cross-examination that the plaintiff had constructed the shop and is in

possession over the same, the learned Additional District Judge has rightly allowed the appeal and decreed the suit of the plaintiff for permanent injunction. The findings given by the learned Civil Judge (Senior Division) in the judgment and decree dated 22.7.2013 were not as per the evidence on record and have been rightly set aside by the learned Additional District Judge (Ad hoc), Fast Track Court, Gurdaspur, in the judgment and decree dated 17.3.2015.

From the record, I find that the findings given by the learned Additional District Judge in appeal are correct and as per law, which do not require any interference from this Court and the same are upheld. There is also no substantial question of law arises in this regular second appeal.

Therefore, finding no merit in this regular second appeal, the same is dismissed.

May 14, 2015.

(Inderjit Singh)
Judge

hsp