

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

RSA No.2137 of 2015 (O&M)

Date of decision : 08.09.2015

Chattar Singh (deceased) through his LRs

...Appellants

Versus

Diwan Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sandeep Singal, Advocate for appellants.

AMIT RAWAL, J. (Oral)

CM No.5568-C of 2015

For the reasons stated in the application, which is duly supported by an affidavit, delay of 141 days in filing the present appeal is condoned.

CM stands allowed.

Main Case

The LRs of defendant No.3 are appellants in the present appeal have assailed the concurrent finding of the fact rendered by the trial Court, whereby suit for possession of the suit property alleged, to be in occupation of the appellants along with other defendants has been decreed.

Mr. Sandeep Singal, learned counsel appearing on behalf of appellants submits that both the Courts below have committed illegality and perversity in decreeing the suit by relying upon report of the Local Commissioner in the previously instituted judicial proceedings at the instance

of the plaintiffs against the other co-owners and said piece of evidence cannot be taken into consideration, for establishing, whether the defendant No.3 and other defendants were in illegal possession of the property. Plaintiffs have to stand on their own legs by proving the alleged dispossession by leading direct and cogent evidence. Courts below have not appreciated the aforementioned legal proposition and thus, rendered the perverse and erroneous findings and, therefore, appeal involves following substantial question of law:-

“1. As to whether documents tendered before Lower Court in some other judicial proceedings can be looked into in the subsequently instituted suit or not.”

I have heard learned counsel for appellants and appraised the paper book.

It is a matter of record that on earlier occasion plaintiffs had filed the suit for permanent injunction against the defendants for restraining them by raising any kind of construction over the suit land. The said suit was partly decreed vide judgment and decree dated 20.02.2003 to the extent that defendants therein were co-owners and in possession of the land. However, it was held that they are not entitled for permanent injunction as sought for. The aforementioned judgment and decree was assailed by the defendants in appeal and appeal was partly allowed vide judgment and decree dated 22.09.2014 by giving specific finding to the fact, it had not been proved that defendants Tara Chand and Hawa Singh had encroached any portion of the property in dispute, but as per the report of the Local Commissioner it was proved that Chattar Singh had encroached the portion of the same.

In view of aforementioned facts, it is discernible that the present suit, in the year 2009, seeking possession from Chattar Singh, who during the pendency

of the previously instituted suit had allegedly encroached upon a land owned by the plaintiffs, had been filed. The report of Local Commissioner, in the previously instituted case, has been tendered into evidence as Ex.P3. The contention that said report cannot be looked into in the absence of the examination of Local Commissioner is not sustainable, for the reasons, that as per the provision of Section 33 of the Indian Evidence Act, statement/evidence given by the witness in judicial proceedings, is admissible, into evidence in a subsequent judicial proceedings. The previous dispute was also between the same parties, though relief, sought was for permanent injunction.

I do not find any illegality and infirmity in the judgment rendered by the trial Court decreeing the suit and affirmed by the Lower Appellate Court.

Both the Courts below have rendered finding of facts and law based on the appreciation of both oral and documentary evidence.

Questions of law as noticed above is hereby answered against the appellants-defendants and in favour of respondents-plaintiffs.

There is no merit in the appeal.

Accordingly, appeal is dismissed.

08.09.2015

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**(AMIT RAWAL)
JUDGE**