

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

RSA No. 228 of 2015 (O&M)

Date of decision: 13.08.2015

Kamal Kumari

... Appellant

versus

Pal Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sudhir Aggarwal, Advocate for the appellant.

K.Kannan, J.

In a suit for recovery of possession in respect of two items, the court found that the plaintiff is not the owner of one item and in respect of another the Commissioner's report was said to be that the defendant had encroached upon the land. The defendant was making an assertion of right by adverse possession. Two Courts have dismissed the suit for possession and the defeated plaintiff will have an argument before me that when the Local Commissioner has found that the defendant had encroached upon the land, the Courts ought to have decreed for recovery of possession of the property in respect of which an encroachment was found.

The proposition made by the counsel is too wide to accept. The suit for ejectment by a plaintiff from a person who is admittedly not a person claiming under him can succeed only if the plaintiff proves better right than the defendant. In order that the defendant's so-called trespass or unlawful possession could give room to plaintiff to secure a relief of

possession, he must prove his legal right to the property. A mere statement that the plaintiff had purchased the property cannot help, for, even a purchaser who may not have a right will not be entitled to obtain eviction from a person who is actually in possession of the property without proof of better title. The principle of law is what would obtain through Section 110 of the Evidence Act that recognizes that possession is 9 points in law and when the question is whether any person is the owner of anything of which is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. It is another way of saying that if the defendant is in possession, and the plaintiff wants to contend that the defendant is not the owner and that he is the owner entitled to be possession, he is bound to prove his ownership. The bare relief of recovery of possession was not even competent, if the suit was not the basis of previous possession and the suit is filed for establishing possessing right in the manner contemplated under Section 6 of the Specific Relief Act. I will find no reason for interfering with the judgment of the Courts below.

The regular second appeal is dismissed.

13.08.2015

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**(K.KANNAN)
JUDGE**