

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

RSA No.2344 of 2015 (O&M)

Date of Decision: 19.08.2015

Jeet Singh and others

.....Appellants

Versus

Om Parkash (deceased) through LRs & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Ajay Kumar Gupta, Advocate,
for applicants-appellants.

SHEKHER DHAWAN, J

Present regular second appeal is against concurrent findings of both the Courts below whereby Court of first instance decreed the suit for mandatory injunction/permanent injunction and first Appellate Court dismissed the appeal.

2. Learned counsel for appellant took the plea that Courts below fell in error while relying upon documents which were not proved. The site plan of disputed property was not proved. The house in question was constructed about 22 years back and suit was filed by plaintiffs-claimants that land was agricultural land only. Both the Courts below have completely ignored these facts while returning the findings and the said findings be reversed.

3. Facts are not disputed that plaintiffs have filed suit for possession with mandatory injunction and permanent injunction on the

ground that they are owner in possession of agricultural land comprising in Rect. No.151 Killa No.1 suit land measuring 8 kanals 10 marlas situated within the municipal limits and revenue estate of Ferozepur Jhirka. As per plaintiffs, defendants are strangers to the suit property and succeeded to encroach upon same and raised construction upon some portion of the suit property forcibly. Request made by plaintiffs were of no use and as such necessity of the suit.

4. Defendants contested the suit taking the plea that father of defendant No.1 namely Umrao was owner in possession of abadi deh land bearing khasra No.2204, 2205, 2206, 2207, 2208, 2209, 2217, 2226, 2233 situated within the municipal limits of Ferozepur Jhirka. Municipal Committee also sanctioned site plan of aforesaid land vide resolution dated 11.08.1989. Plaintiffs sold the suit property and vendees raised construction thereon. Umrao also sold some land to Shiv Lal vide registered sale deed bearing Vasika No.965 dated 04.11.1967 and municipal committee had raised construction of pucca road upto the house of defendant. Electric poles were also installed on the same. Defendants had been paying the house tax continuously. Defendants were granted permission to raise construction of toilets on the suit property. Earlier also civil suit titled as Om Parkash etc. Vs. Daya Chand etc. was filed which was decreed vide judgment and decree dated 24.01.2009. The suit of present plaintiffs is without any merit and same be dismissed.

5. Court of first instance settled the issues on the above pleadings and after appreciating the entire evidence decreed the suit with the directions to remove the said encroachment to the extent the construction shown as per Local Commissioner report and hand over the vacant

possession and further directions were given to the defendants not to raise any sort of construction over the suit property or any part thereof or dispossess the plaintiffs from the suit property. Defendants remained unsuccessful before the first Appellate Court.

6. Now there are concurrent findings of facts from both the Courts below. Both the Courts below have already appreciated the oral as well as documentary evidence that plaintiffs are owner in possession of the suit property and defendants encroached upon the same illegally and unauthorizedly and also succeeded in raising construction over the suit property and defendants were liable to remove the said construction.

7. Having considered the submissions made by learned counsel for the appellants, material and evidence available on file, this Court is of the considered view that both the Courts below have recorded concurrent findings of facts. The said concurrent findings of fact do not involve any substantial question of law calling for interference by this Court by way of present Regular Second Appeal. Such a law was laid down by Hon'ble Supreme Court in case Santosh Hazari Vs. Purushottam Tiwai (dead) by LRs., 2001(3) SCC 179 that if concurrent findings recorded by both the Courts below and there being no substantial question of law involved in the case, Regular Second Appeal is not maintainable as per provisions of Section 100 of Code of Civil Procedure.

8. In view of the above present Regular Second Appeal being without any merits stand dismissed.

(SHEKHER DHAWAN)
JUDGE

August 19, 2015

msd