

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

RSA No.3249 of 2015 (O&M)

Date of Decision: 03.08.2015

Harish Chander alias Hari Chand

.....Appellant

Versus

Mohinder Singh and another

.....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. B.S.Bairagi, Advocate,
for appellant.

SHEKHER DHAWAN, J

Present Regular Second Appeal is against judgements of both the Courts below whereby suit for possession filed by plaintiffs-respondents was decreed by Court of first instance and appeal filed by appellant-respondent was dismissed by First Appellate Court.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of appeal that plaintiffs filed suit for possession of three *marla* plot bearing *Khasra* No.1582 on the ground that they held a *Gair Mumkin* Plot measuring 19 *Marlas* pertaining to *Khewat* No.581, *Khatoni* No.696, *Khasra* No.1582 at village Mokhra Khas. On boundary line of '*Lal Dora*' there exists plot

pertaining to *Khasra* No.1581 and towards eastern side plot bearing *Khasra* No.484 held by Lal Chand. However both the plots pertaining to *Khasra* No. 1581 and 484 are occupied by the defendant and he had raised construction of house over the same. Suit property is adjacent to the East of the defendant's house. In the month of June, 2008 the defendant encroached upon western portion of the plaintiffs property measuring three *marlas* by constructing a room, a kitchen and verandah as shown in the site plan. During the month of September 2011, when the plaintiffs started to raise boundary walls over the suit property, at that time objection was raised by Ranbir son of Ram Singh about measurement of the plot. Plaintiffs got demarcated the suit property from the concerned *Kanungo Halqua, Madina* and came to know that in fact defendant encroached upon western portion measuring three *marlas* of the suit property as detailed in demarcation report dated 20.10.2011. Request was made to defendant to deliver the vacant possession of three *marlas* land but to no effect. The matter was taken up at *Panchayat* level but to no effect.

4. Defendant contested the suit taking the plea that in fact plaintiffs are owner of the suit property but they had given the possession of 3 *Karam* of width of South side of the property of the defendant in the year 1991 and in lieu of that they have already taken the land in northern side of the plot from the defendant. Thereafter defendant raised construction of house in the year 1991. It was agreed mutually between the parties that defendant would give 1-1/2 *Karam* of his land in the North side to the plaintiffs and plaintiffs would give 3 *Karam* of his land in the South side to the defendant of the suit property. Defendant has already given the vacant land to the plaintiffs in the year 1990 when a compromise was arrived at

between the parties. Now the land which has been shown to be disputed property is in fact in possession of the plaintiffs on the basis of exchange and compromise and suit of the plaintiffs is without any merit and same may be dismissed.

5. Court of first instance after appreciating the oral and documentary evidence returned the findings of fact that oral exchange was not proved rather it had been proved on the file that defendant was in unauthorized possession over the area of the plot of the plaintiffs and plaintiffs are entitled to possession of the same. The said findings of fact were affirmed by Court of first appeal.

6. Learned counsel for appellant took the plea that both the Courts below have not appreciated the evidence properly as the possession on the suit property of the defendant is in the capacity of owner on the basis of exchange and mutual settlement. The said findings recorded by both the Courts below are liable to be set aside and appeal be accepted.

7. Having considered the submissions made by learned counsel for the appellant and a perusal of record this Court is of the considered view that facts and evidence were duly appreciated by both the Courts below and plea of appellant regarding exchange of the land on the basis of mutual agreement was held to be not proved on the basis of available evidence. The said findings of fact recorded by both the Courts below do not call for any interference.

8. There is no 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 findings

were 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.

10. In view of the above present Regular Second Appeal being without any merit stand dismissed.

**(SHEKHER DHAWAN)
JUDGE**

August 03, 2015
msd