

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

\* \* \* \* \*

**RSA No. 1011 of 2014**

Date of decision : March 2, 2015

\* \* \* \* \*

Kartar Singh

.....Appellant

Versus

Charan Singh and others

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

\* \* \* \* \*

Present: Mr. Sahil Khunger, Advocate for the appellant.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

**RITU BAHRI, J**

This regular second appeal has been filed challenging the judgment of reversal dated 7.12.2013 passed by the District Judge, Ferozepur whereby an appeal under Section 96 CPC filed against the judgment and decree dated 23.2.2010 passed by the Additional Civil Judge (Senior Division), Ferozepur dismissing the suit of the plaintiff was accepted.

The plaintiff-appellant had filed the suit for permanent injunction on the allegations that the plaintiff was in exclusive possession of the suit land measuring 31 kanals 14 marlas as detailed in the head note of the plaint situated in Village Ghall Khurd, Tehsil and District Ferozepur as co-sharer. The defendants-

respondents have got no title or interest in the suit land, but they are bent upon to dispossess the plaintiff from the suit land forcibly for which they have got not right to do so. The defendants-respondents tried to forcibly dispossess the plaintiff-appellant from the suit land but they could not succeed. Upon notice, defendants admitted that the plaintiff is co-sharer in the joint land but denied that the plaintiff is in possession of the land in dispute. Entries in the Khasra Girdawari have been wrongly recorded in the name of the plaintiff. It was pleaded that defendant no.1 along with Gurnam Singh had already filed an application for correction of Khasra Girdawari regarding the land measuring 4 kanals 6 marlas comprising or Rect. No. 45 Killa No. 3/1, on which defendant no.2 has constructed his residential house and is residing therein along with his family members.

The following issues were framed by the trial Court:

- 1. Whether the plaintiff is in exclusive possession of the land in dispute? OPP.*
- 2. Whether plaintiff is entitled for injunction as prayed for? OPP*
- 3. Whether suit of the plaintiff is false, frivolous and vexatious to his knowledge? OPD.*
- 4. Whether the plaintiff has suppressed the material facts from this Court? OPD.*

The trial Court examined the evidence led by the parties. As per the Jamabandi for the year 2000-01 (Ex.P2), plaintiff and father of the defendants were shown as co-sharers in the disputed

land. As per the Khasra Girdawari relating to Sauni 2003 to Harri. 2004 Ex. P2, plaintiff was in exclusive possession of the land in dispute. The deposition of DW-1, Avtar Singh who appeared as attorney of defendants no. 2 & 3 could not be taken into account on the ground that the Power of Attorney can only appear as a witness in his personal capacity and whatever knowledge, he has of the case, he cannot appear as a witness on behalf of the party. The case of the plaintiff was taken to be admitted by the defendants as none of the defendants appeared in the witness box and the suit was decreed. On appeal, the Lower Appellate Court has dismissed the suit of the plaintiff. The plaintiff had appeared for examination-in-chief and thereafter his cross-examination was partly recorded on 17.8.2008. Further cross-examination was deferred. The application under Order 1 Rule 10 CPC was made on behalf of Avtar Singh and Veer Singh for impleading them as parties in the suit which was disposed of on 1.8.2007. Thereafter, the plaintiff was granted five effective opportunities to produce evidence on 21.7.2008, 8.10.2008 and 23.1.2009 and finally on 16.3.2009, he closed his evidence without tendering further cross-examination.

A perusal of the cross-examination of the plaintiff-appellant recorded on 17.8.2008 shows that he had admitted that Charan Singh was a co-sharer and made a house and the plaintiff-appellant had permitted him to stay in that house. After making the statement in cross-examination on five effective dates, thereafter plaintiff-appellant did not appear for cross-examination. Therefore,

as per his own admission, the respondent no.1 Charan Singh was in possession of the suit land and the suit of the plaintiff was dismissed. The plaintiff had to lead sufficient evidence to prove and establish his case. In the present case, he has not done so. At the same time, admitting that Charan Singh was in possession of the suit land and was residing therein, the suit of the plaintiff has been rightly dismissed by the Appellate Court.

In view of the above facts, no substantial question of law arises for consideration to entertain this appeal. Hence, present regular second appeal is dismissed.

March 2, 2015  
*ritu*

( **RITU BAHRI** )  
**JUDGE**