

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 1236 of 2014

Date of decision: October 07, 2015

GIAN CHAND

.....APPELLANT

VERSUS

OM PARKASH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the Local papers 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?*

Present:- Mr. Munish Gupta, Advocate for the appellant.

JASPAL SINGH, J

By virtue of regular second appeal, Gian Chand has challenged the judgment and decree dated 17.10.2013 passed by Id. Additional District Judge, Hoshiarpur in Civil Appeal No. 72 of 15.06.2011 whereby an appeal preferred by the plaintiff-appellant challenging the judgment and decree dated 18.05.2011 passed in Civil Suit RBT No. 1582 was upheld vide which the suit for permanent injunction restraining the defendant from dispossessing and interfering in any manner in possession of the plaintiff over the land measuring 0 Kanal 14 Marlas being part of khasra No.49R/(1k-7M) comprising in Khewat No. 254 Khatoni No. 315 bounded as:-

North	Gali
South	Gali
West	School & Panchayat Ghar
East	Plaintiff's property

as marked ABCD as shown red colour is attached site plan situated in village Shri Pandian HB No.376 Tehsil Mukerian District Hoshiarpur.

2. The claim of the plaintiff-appellant is that he is owner in possession of land measuring 14 marlas fully detailed and described in para No.1 of this judgment, which is located in the village Shri Pandain, Tehsil Mukerian, District Hoshiarpur. The suit property is in *abadi* area and it was inherited by him from his forefathers. As per the copy of jamabandi for the year 1960-61 Ex. P8 placed on record by the plaintiff, which is in Urdu script Khasra No. 49 (1K-7M) has been recorded as *gair mumkin abadi* of the village. Thus, it stands amply proved from the revenue record that the suit property is in *abadi* land and there exists construction of house.

3. During the course of arguments before the 1d, trial Court, Shanti Sarup, attorney of plaintiff-Gian Chand stepped into the witness box as PW-5. He has placed and proved on record the site plan of the disputed premises Ex.P-1, prepared by PW-4 Surinder Kumar, draftsman but the site plan leads no where as its dimension has not been fully depicted. Moreover, there is an admission on the part of plaintiff that Shiv Kumar and Amrit Lal are in possession of the suit property. There is also nothing on the record to suggest that Gian Chand ever came in possession of the property in suit. Rachhpal Singh, Sarpanch of village Chak Pandian has been examined as DW-2, who has categorically deposed that defendant Om Parkash and Shiv Kumar are in actual physical possession of the *abadi deh* comprising Khasra No.49.

4. It is well settled proposition of law that the plaintiff has to prove his case independently and he cannot take the advantage of the

weakness of the defence. Similarly, the plaintiff has to succeed or to fail on the title he establishes and if he can not succeed on the strength of his title, his suit must fail notwithstanding that the defendant is in possession has no title to the property.

5. In other words, if the defendant is proved to be in possession of the property in dispute even without having any title, he cannot be dispossessed and no injunction can be granted against him.

6. Adverting to the facts and circumstances of the case in hand, admittedly, Shiv Kumar and Om Parkash are in possession of property in *abadi deh* bearing khasra No. 49 whereas the plaintiff has miserably failed to prove on record that he ever came in possession of the property in suit. Rather, there is a categoric admission on the part of Shanti Sarup, attorney of the plaintiff when he appeared in the witness-box as PW-5 that defendants are in possession of the property in suit. Thus, the ld. trial court has rightly come to the conclusion that the plaintiff has failed to prove either the title or possession over the property in suit. Rather, the same is in actual physical possession of the defendants. Thus, findings have also been rightly upheld by the ld. appellate Court.

7. This Court does not find any infirmity, illegality or impropriety in the judgments and decrees rendered by both the courts below and finding the instant appeal devoid of any merits, the same stands dismissed.

8. No order as to costs.

October 07, 2015

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**(JASPAL SINGH)
JUDGE**