

**RSA No. 1710 of 2014(O&M)**  
**Date of decision : October 6, 2015**

..... **Appellants**

## Jarnail Singh and others

..... Respondents

Present:- Mr. Aayush Gupta, Advocate  
for the appellants.

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1. Whether reporters of 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?

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 42 days in filing the appeal is condoned.

The application stands disposed of.

The appellants-plaintiffs are in Regular Second Appeal against the concurrent finding of fact whereby the suit for

permanent injunction restraining the defendants forever from interfering the plaintiffs from installing and running panjawa on the suit land forcibly and illegally and as well as dispossessing them and lifting khora forcibly from the suit land i.e. 40 Kanals entered in khewat No.1627 min.khatoni No.2175 Rect.No.52 killa No.27 min situated within the revenue estate of Village Cheeka Tehsil Guhla District Kaithal on the basis of jamabandi for the year 2000-2001 has been dismissed.

Mr. Aayush Gupta, learned counsel appearing on behalf of the appellants submits that though, the respondents-defendants also claimed injunction by way of counter claim but both the courts below ignored the documentary evidence on record and heavily relied upon the site plan prepared by the Local Commissioner declining the relief. The identity of the property was proved, much less the possession, therefore the appellants-plaintiffs are entitled to injunction as sought for, thus, the appeal involves substantial question of law for determination by this court.

I have heard learned counsel for the appellants and appraised the paper book.

The trial court in paragraph 20 for appreciating the oral and documentary evidence gave the following findings.

*“Admittedly, one civil. suit bearing No,137 of 1998 titled as Gurdeep Singh etc. Vs. Santu etc. decided on. 16.11.1999 was filed against the present plaintiffs and the defendants and some other person, which was dismissed. Plaintiff No.4 Maam Chand has appeared into witness box as PW3 and*

*filed his duly sworn affidavit Ex.PW1/A, in which he has reiterated all the contents of the plaint. Plaintiff No.4 Maam Chand in his affidavit has specifically mentioned that plaintiffs are in possession of the suit land and the suit land was kept reserved at the time of consolidation for kumhar community. He has further stated that the proceedings-under Section 145, Cr.P.C. were initiated by the Sub Divisional Magistrate. Guhla and later-on the suit land was distributed among both the parties i.e. out of 18 panjawa 14 paniawa were given to the plaintiffs and 4 panjawa were given to the defendants and this fact has been further admitted by the defendant no.3 Ram Dhari while appearing in the witness box as DW2 that the defendants are in possession of 4 panjawa and plaintiffs are in possession of 14 panjawa. The certified copy of the judgment dated 16.11.1999 passed in civil suit no.137 of 1998 is available on record as Ex.D4, A perusal of judgment, dated 16.11.1999 Ex.D4, shows that the issue no.1 was framed as "Whether the installation and operation of the brick kiln by the defendants amounts an actionable nuisance and is a source of pollution for the plaintiffs and adjacent residential area?OPP" and the plaintiffs had failed to prove this issue, hence, the suit of the plaintiffs was dismissed vide judgment and decree dated 16.11.1999 Ex.D4. it is an admitted fact that. Sh.S.P. Jindal, Advocate was*

*appointed as Local Commissioner in the civil suit no.137 of 1998. Defendants have examined Sh.S.P.Jindal. Advocate as DW5, who after the spot verification prepared the site plan Ex.DW5/A dated 07.06.1998, in which it has been mentioned that*

*only three brick kiln are running and a perusal of site plan shows that and there are only 8 panjawa out of which three panjawa were in working condition and this site plan is contrary to the statements of PW3 and DW2 because as per statements of PW3 and DW2 there are 18 panjawas out of which three panjawa were in working condition and this site plan contrary to statements of PW3 and DW2 because as per statements of PW3 and DW2 there are 18 panjawa out of which the plaintiffs are in possession of 14 panjawa and defendants are in possession of 4 panjawa. The defendants are also claiming their possession on the basis of site plan dated 7.6.1998 Ex.DW5/A prepared by Local Commissioner over 4 panjawa, but as per site plan prepared by Local Commissioner there are only three running panjawa and five panjawa are not in working condition. It is an admitted fact that the suit land is measuring 40 kanals fully detailed and described in para no.1 of the plaint, but the plaintiffs themselves have not been able to establish the area of which they are in possession. They have also not filed any site plan to establish the particular area with the dimensions and directions to establish the identity of the land in their possession and similar situation is with the defendants because their counterclaim is passed upon the site plan prepared by the Local Commissioner dated 07.06.1998. It has been held by the Hon'ble Punjab & Haryana High Court in case titled Hardev Kaur Vs. Surinder Kaur 2009(1) PLR-187 that there was no dimension of property in the suit which has been given except the site, therefore, in the absence of specific dimensions,*

*vague decree cannot be passed in favour of the plaintiff. Reliance can also be placed on the law laid down by our own Hon'ble High Court in case **Jarnail Singh and another versus Ram Singh 2000(1) CCC 570 (P&H) wherein it was held that a suit for possession, if the identity of the property is not established, suit cannot be decreed in favour of the plaintiff.***"

The aforementioned finding has been upheld by the appellate court in the appeal.

On perusal of the finding, it is ex facie proved that the appellants-plaintiffs were not able to prove the identity of the property, much less area, for which injunction was sought and so was the case of the defendants and accordingly dismissed the suit as well as counter claim.

The Local Commissioner in his report dated 7.6.1998 exhibited Ex.D-5/A proved that the site plan placed on record on behalf of the plaintiffs and possession of defendants was not established.

In view of the absence of description and identity, which is an essential requirement of law in a suit for injunction, no injunction can be granted.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of both the courts below.

No substantial question of law arise for

determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**October 6, 2015**  
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