

112

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

**RSA No.2305 of 2014 (O&M)**

**Date of Decision: 01.12.2015**

**Jagdish**

**.....Appellant**

**vs**

**Satpal and another**

**....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present:Mr. A.K. Khunger, Advocate  
for the appellant.

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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?*

**RAJ MOHAN SINGH, J.**

[1]. Plaintiff is in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit land as depicted in the headnote of the plaint.

[2]. Plaintiff alleged that he is owner in possession of suit land having defined dimensions. The property has five trees, water diggy, open space, two *samadhs* of father and grandfather of the plaintiff. Defendants have no concern with the property in question. Defendants are claimed to be mere

strangers to the suit property.

[3]. The suit was contested by the defendants on merits. It has been claimed that Moti Ram was the grandfather of the plaintiff as well as that of defendants and after his death three sons namely Jas Ram, Ram Jas and Ram Rakh were the legal representatives. Now after the death of aforesaid three brothers, their legal representatives are joint owners of the suit property.

[4]. On the basis of pleadings of the parties, following issues were framed:-

- “1. *Whether the plaintiff is in possession of the suit property?OPP*
2. *Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
4. *Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD*
5. *Relief.”*

[5]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[6]. Trial Court dismissed the suit on the ground that there is no convincing evidence on record to show possession of the plaintiff over the suit property much less the diggy in question. In his cross-examination plaintiff has admitted that he has no

document in his possession with regard to the ownership of the property. Further he admitted that the defendants being grand sons of Moti Ram have right to pay obeisance at the *Samadh* of Moti Ram. He also admitted that he wanted to sell the trees standing in the suit property alone.

[7]. In respect of path running on eastern side of the suit property as shown in the green colour in site plan Ex.PW2/A, the onus was on the plaintiff, however the existence of path at the spot was denied by the defendants and Local Commissioner was appointed. As per report Ex.D-3 submitted by Local Commissioner, alongwith rough site plan Ex.D-5, no path/*rasta* on eastern side of the property has been found. Admittedly no documentary proof has been produced by the defendants on record. Trial Courts dismissed the suit and the plaintiff remained unsuccessful before the lower Appellate Court as well. Hence the present appeal.

[8]. I have heard learned counsel for the appellant.

[9]. Learned counsel for the appellant has argued that the Panchayat has executed Panchayatnama Ex.P-1, finding existence of diggy in the land of appellant and secondly as per order (Ex.P-2) passed by Canal Authorities, factum of possession of appellant over the site is writ large on record of the case.

[10]. I have considered both the submissions raised by the learned counsel for the appellant. On perusal of alleged Panchayatnama Ex.P-1 it is noticed that the concluding part of Panchayatnama seems to be tampered with. There is no recital in the earlier part of it that the Panchayat gave the aforesaid factual details after visiting the spot. Once the aforesaid omission was realised then in the concluding part of the aforesaid document, overlapping was made to show that the members of the Panchayat visited the site in question and ultimately found that the said diggy/water tank belonging to plaintiff/appellant is in existence.

[11]. There is no documentary evidence to support the aforesaid document. Moreover, said document remained confined to alleged signatures of Panches and Sarpanch. Ex-Sarpanch Harchand Singh has been examined and on the strength of his deposition, learned counsel for the appellant contends that execution of the document Ex.P-1 is proved. Whereas perusal of this document itself shows that neither the plaintiff has signed the document, nor the defendants have signed the same. The reliance is being placed on the contents of the document which in considered opinion of this Court cannot be relied for want of other corroborative evidence.

[12]. The document Ex.P-1 cannot be treated to be a

document of title by any stretch of imagination. There is no corresponding material on record to corroborate the fact of ownership of site in question in favour of the plaintiff-appellant. The document Ex.P-1 i.e. Panchayatnama has been produced on record by the plaintiff which has been witnessed by some of the villagers alleging that the property in question is in possession of Ram Jas for the last 50 years. How the villagers or the Panchayat members can opine such a period in the absence of any documentary evidence viz. revenue record etc., prescribing the possession of Ram Jas over the property in question for the last 50 years? The last two lines of this document have been proved to be written after putting the signatures of the witnesses, therefore, this document is ruled out of consideration. Tampering is apparent even from naked eyes.

[13]. The second contention of the learned counsel for the appellant is also of no consequence inasmuch as that the order of Canal Department Ex.P-2 shows the water tank in the land of Jagdish. How the Canal Department has come to the conclusion that the diggy constructed falls under the land of Jagdish. It is conspicuous in view of the fact that there is no revenue record available with the Authority to opine in such a manner, nor any documentary evidence has been mentioned by the Canal

Department while mentioning the said fact in the order. The recital of the order, does not provide origin and basis of such incorporation. Therefore, from this document, the possession of the appellant over the suit land cannot be presumed.

[14]. Admittedly both the parties are descendants of Moti Ram. The factum of partition is not proved on record. In view of status of the parties being descendants from common ancestor, the property in question cannot be presumed to be segregated for want of lawful instrument on record. Therefore, user can be held to be joint and in the absence of any ouster or exclusive possession of the property in question with reference to material on record, injunction cannot be granted against the defendants.

[15]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial

question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[16]. The appellant has framed following substantial questions of law in para No.12 of the grounds of appeal:-

- “(i). *Whether there is not a total mis-appreciation of evidence by both the courts below while deciding the matter in controversy?*
- (ii) *Whether the courts below were justified in discarding the evidence with regard to Ex.P1 Panchayat Nama which was duly proved on the case file and the same also bears the signatures and thumb impressions of the Panches, Lambardar, Ex-Sarpanch and others?*
- (iii) *Whether the judgments and decrees passed by the Courts below are sustainable in the eyes of law.”*

[17]. Question No.(i) cannot be answered in Second Appeal. There cannot be any re-appreciation of the evidence. As regards question No.(ii), the alleged Panchayatnama has been discarded with reference to relevant discussion in the preceding para. Moreover Panchayatnama is proved to be overlapping as the signatures of the witnesses were put later on. The over writing in the context of subject matter only gave irresistible conclusion that this document was forged and manipulated. The

tampering is apparent from the naked eyes and this document cannot be taken into consideration. Moreover both the parties have not signed the document in question. Therefore, question No.(ii) does not arise at all because the same is not even a question of law. Question No.(iii) is not a question of law, rather it is the outcome of relevant discussion of the case.

[18]. This Court has given anxious thought to the issues involved in the appeal and does not find any worth in the claim of the plaintiff. Accordingly this appeal is dismissed being totally devoid of merits.

December 01, 2015

*Atik*

**(RAJ MOHAN SINGH)  
JUDGE**