

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

**RSA No.5086 of 2015 (O&M)
Date of Decision: October 08, 2015**

Suresh Kumar

.... Appellant

vs.

Manjit Singh @ Manjeet and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ramesh Hooda, Advocate for the appellant.

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?*

Kuldip Singh J.(Oral)

CM-12170-C-2015

There is delay of 106 days in filing the present appeal.

For the reasons mentioned in the application supported by an affidavit, delay of 106 days in filing the present appeal is condoned subject to all just exception.

Application stands disposed of.

RSA-5086-2015

Challenged in the present regular second appeal is the judgment and decree dated 13.05.2015 passed by learned District Judge Jind, affirming the judgment and decree dated 27.02.2013 passed by learned Civil Judge (Sr. Divn.), Jind, vide which the suit of the plaintiff for permanent injunction was dismissed.

The plaintiff claims that he is in possession of the disputed property marked as CDEF of the site plan, which adjoins his house marked as ABEF. He claims that he is in possession of the disputed property since the time of his forefathers and installed flour mill, fodder cutting machine, bathroom and khor etc. The defendants are neighbourers and want to encroach upon the disputed property. The lower court on the basis of report of the Local Commissioner, found that the flour mill, fodder cutting machine etc. are temporary structures, which show that it was recently placed. It was further held that the suit property is land of Gram Panchayat i.e. part of Pana Chopra, which is reserved for common purposes. Therefore, the injunction to the plaintiff was refused. The findings were affirmed in appeal.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

Admittedly, in this case, the Local Commissioner was appointed, who had submitted his report. The learned District Judge, Jind has taken into consideration the report of the Local Commissioner and minutely examined the same. It was found that only bricks have been stacked without any mud or cement etc. These bricks are not fastened in the earth where flour mill is stated to be installed. He has also referred to the open space shown in between point HE stating it to be without any door. The plaintiff has constructed one WC by constructing one room at point H and one pump for sucking the Govt. supply water from tap has been placed at

point X. Chef cutter has been placed at point I. Flour mill at point Z and Electric motor at point ZZ. The iron staircase has been placed at point ZZZ.

The lower appellate court made the following observations:

“So far as the ownership and possession of the appellant-plaintiff over the plot marked as ABEF is concerned, the same is not disputed and it is even the case of the appellant-plaintiff that his father had purchased one plot measuring 150 Sq. yards. With regard to the remaining portion CFED, the plea of the respondents-defendants appears to be more plausible and explanatory. According to them this land belonged to Panna Chopra and was kept reserved by one resolution for all the co-sharers of Panna Chopra for common use. From the report of Local Commissioner, it has become crystal clear that the appellant-plaintiff has recently encroached upon the portion and has installed Atta Chakki, Chara Machine, Bathroom and Khor etc. There is no iota of evidence to the effect that these structures are more than 65 years old. From the sequence of events, it appears that appellant-plaintiff taking undue advantage of the land lying vacant raised kacha construction including to a WC and installed a Atta Chakki therein. It appears that the appellant-plaintiff has not given the exact area of the total plot marked ABCD because of his only claim can be with regard to the plot measuring 150 Sq. yards.”

The learned District Judge, Jind concurred with the findings that land belonged to Chopra Patti and was left for the

common purpose. The plaintiff also a co-sharer in the Chopra Patti and by taking undue advantage had encroached upon the same. Therefore, the injunction to the encroacher was declined.

After examining the judgments and decrees of both the courts below, I come to the conclusion that the findings of the facts have been recorded that the structure is temporary and not existing from the time of forefathers of the plaintiff and that some articles have been temporarily placed to claim the possession. Therefore, the plaintiff, who was held to be the encroacher upon the disputed property is not entitled to injunction to perpetuate the illegality done by him.

No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

October 08, 2015
sarita

(KULDIP SINGH)
JUDGE