

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

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Regular Second Appeal No.2712 of 2014 (O&M)
Date of Decision: October 15, 2015

Harnek Singh

...Appellant

Versus

Gulzar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajinder Kumar Singla, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.11142-C of 2015

Prayer in this application is for impleading the legal heirs of the respondent-plaintiff Gulzar Singh, who is stated to have died on 07.04.2014 at village Chhanga Rai Uttar, District Ferozepur.

The details of the legal heirs are mentioned in para 3 of the application, according to which Paro Bibi is the widow of the respondent-plaintiff Gulzar Singh and Sonu is his son. The application is supported by an affidavit. The amended memo of parties is also appended along with the application.

Keeping in view the above, the present application is allowed.

Paro Bibi and Sonu are impleaded as legal heirs of respondent-plaintiff Gulzar Singh.

The amended memo of parties appended along with the application is taken on record.

Registry is directed to place the same at the appropriate stage of the case.

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Guru Har Sahai, dated 08.05.2013, whereby the suit for declaration filed by the respondent-plaintiff that he is the owner of the house and, therefore, should be granted the relief of possession of the property containing one room and courtyard as shown in the site plan, details of which have been given in the head note, situated in village Chhanga Rai Uttar, District Ferozepur, comprising of Khasra No.114 as per the jamabandi for the year 2002-03 and suit for permanent injunction restraining the appellant-defendant from raising any construction over the premises without the permission of the respondent-plaintiff, stands decreed and the appeal preferred by the appellant-defendant against the said judgment and decree, stands dismissed by the learned District Judge, Ferozepur, on 17.12.2013.

2. It is the contention of the learned counsel for the appellant-defendant that the onus to prove that the house in question was owned by the respondent-plaintiff was on him, which has not been discharged by him, specially keeping in view the fact that in his cross-examination, he has admitted that the house is situated within the lal lakir of the village and, therefore, does not contain any Khasra number. The evidence which has been produced on record indicates that the property, which is being sought to be asserted as his house, is in Khasra No.114 (1-5) as per the jamabandi for the year 2002-03 Exhibit P-4 showing *gairmumkin abadi*. His further contention is that as per this jamabandi, there are 200 co-sharers in a land measuring 82 kanals and 16 marlas and, therefore, the share of the respondent-plaintiff would not be as is being claimed by him i.e. 1 kanal

and 5 marlas. He, thus, contends that the evidence which has been brought on record does not establish that the respondent-plaintiff is the owner of the house in question. Further in the cross-examination, PW-2 Santa Singh has admitted that the house was constructed by the appellant-defendant Harnek Singh, although he has not been able to give the date or the year, in which the said construction was raised. He accordingly contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside.

3. These contentions of the learned counsel for the appellant-defendant cannot be accepted in the light of the fact that the respondent-plaintiff has been able to lead evidence, which clearly depicts that the house in question was indeed constructed by him and that too in Khasra No.114 (1-5). It is a different question that there are more than 200 co-sharers of the total land measuring 82 kanals 16 marlas and may be he is in possession of the area, which is in excess of his share but that does not establish that the house, which is in question, was not built by him. The plea which has been taken by the appellant-defendant about adverse possession further indicates that the ownership of the respondent-plaintiff has been accepted.

4. The plea taken by the appellant-defendant that he is the owner of the property as he had bought the same from one Shri Kashmir Singh in the year 1988 on the basis of an affidavit, has not been proved, specially when the said affidavit is not a registered one and in any case, if the same has to be taken to have been legally entered into, the same requires compulsory registration as admittedly the property is valued at more than ₹100/-. As a matter of fact, there is no sale deed. The findings, thus, recorded by the Courts below in the considered view of this Court, cannot be faulted with as these are based on proper appreciation of the pleadings

and the evidence which has been brought on record. Some discrepancies, as has been pointed out by the counsel for the appellant-defendant, may be there but they do not go to the core question and, therefore, would not affect the merits of the claim made by the respondent-plaintiff when other evidence is seen in conjunction with the pleadings.

5. Both the Courts below have returned concurrent findings after properly appreciating and discussing the evidence in detail which warrant no interference therewith as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.6365-C of 2014 stands disposed of as infructuous.

October 15, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE