

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

RSA No.621 of 2015 (O & M)

Date of Decision:23.02.2015

Anand

....appellant

Versus

U.H.B.V.N.L.

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1. Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

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

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 28.11.2013. Appeal preferred against the said decree failed and was dismissed on 19.12.2014. This is how, plaintiff is before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiff prayed for a decree for injunction restraining the defendants from interfering in his peaceful possession over the land marked by letter ABCD, shown in red colour in the site plan, appended with the plaint, by raising any construction thereon, or by demolishing the rooms X and Y. It was averred that the fore-

fathers of the plaintiff had constructed two rooms in the suit property as depicted in the site plan and since then, he had been in possession thereof. It was maintained that the agricultural land of the plaintiff was situated adjacent to the northern and eastern side of the suit property marked by letters ABCD. In fact, some portion of the room X, was constructed over the suit land marked by letters ABCD and the remaining portion was a part of the agricultural land of the plaintiff. Similarly, some portion of room Y was constructed over the suit land marked by letters ABCD and the remaining portion was situated in the agricultural land owned by the plaintiff, that was adjacent to the northern side of the said room. It was averred that on 17.02.2010, officials of the defendant tried to interfere in the peaceful possession of the plaintiff and threatened to construct a wall from points C to D in the site in question. On being confronted, the officials of the defendant revealed that the gram panchayat of village Sewah had given the suit land to the defendant for construction of a power house. Though, gram panchayat of village Sewah had no authority to transfer the suit property. As, despite having been requested, defendant refused to acknowledge the claim of the plaintiff, thus, the suit.

In defence, it was pleaded, inter alia, that the gram panchayat of village Sewah was, in fact, the owner in possession of land measuring 8K comprised in killa No.76/4 and the same was transferred by the gram panchayat to the answering defendant for construction of 33 KV Sub Station, and its vacant possession was handed over to the defendant. It was maintained that the defendant

had even constructed a power house in the suit land and the same was inaugurated on 17.11.2013 by the then Chief Minister and the same was in operation since then. It was denied that the plaintiff was in possession of the site in question, and, thus, his claim was wholly false. The site plan produced by the plaintiff was alleged not to be in conformity with the position existing at the spot.

On a consideration of the matter in issue and the evidence on record, the courts below found that that the plaintiff failed to lead any evidence to substantiate his claim. It was observed that he failed to indicate in the plaint or even in his affidavit i.e.Ex.PW1/A that as to in which khasra number the suit land was comprised in. So much so, he even failed to sufficiently describe the suit property, so as to even show, in respect of which land, he was claiming the injunction for. Even the site plan (Ex.P1), that was being relied upon by the plaintiff, was discarded. Rishi Lal(PW3), who had concededly drawn the said site plan, admitted in his cross examination, that he did not possess any academic qualification of a draftsman and, in fact, he had drawn the said plan as per the directions of the plaintiff. So much so, even averments set out in the plaint showed that the said site plan was incorrect and could not be relied upon. In para 3 of the plaint, it was averred that some portion of room Y was situated over the land marked by letters ABCD and the remaining portion thereof was situated on the land of the plaintiff towards the northern side of the said room. However, an analysis of the site plan showed that the room Y was shown to be in existence entirely on the land marked by letters ABCD. So much so, plaintiff

(PW1), while appearing in the witness box, conceded in his cross examination, that he had no documentary proof regarding his ownership and possession over the suit land. He also categorically admitted that he had no concern over the land comprised in khasra No.76/4. That being so, it was concluded that the plaintiff had failed to substantiate his claim. Resultantly, the suit and thereafter even the appeal preferred by the plaintiff was dismissed.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, for plaintiff to succeed he was required to prove that he indeed was in possession over the land marked by letters ABCD shown in red colour in the site plan appended with the plaint. Concededly, nothing was brought on record by the plaintiff to prove that he had actually been in possession over the site in question. So much so, he testified in his cross examination that he had no documentary proof to prove his title as well as possession over the suit property. The site plan (Ex.P1) that was brought on record by the plaintiff, in support of his claim,

was rightly rejected after due consideration by the courts below. Even the averments set out in para No.3 of the plaint proved that the site plan in question was not in conformity with the position existing on the spot. The claim of the defendant that the site in question was comprised in khasra No.76/4 and was owned by gram panchayat village Sewah who, later transferred the said site to the defendants for construction of 33 KV Sub Station remained un-controverted on record. Likewise, claim of the defendant that pursuant to the transfer of the said site, defendants were put in possession of the suit property and had also constructed a power house, also, remained un-rebutted. Defence set out by the defendant further revealed that the said power station was inaugurated on 17.11.2013 by the then Chief Minister and was in operation since then. Concededly, plaintiff never claimed any title qua the suit land. No cogent evidence was brought on record to prove that the plaintiff was in actual, physical possession of the site in question. In short, plaintiff failed to prove his claim and thus the only and the inevitable conclusion was the dismissal of the suit.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less

any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

23.02.2015
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(ARUN PALLI)
JUDGE