

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4133 of 2014(O&M)
Date of decision: 23.09.2015

Sukhdev Singh

... Appellant

Versus

Suresh Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Jagram Singh Cooner, Advocate
for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 11.03.2013. As even the appeal preferred against the said decree failed and was dismissed vide judgment dated 11.04.2014, the 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 a suit filed by the plaintiff, he prayed for a decree for injunction, restraining the defendants from interfering in the possession of the plaintiff over the suit property that is a Bara, shown in green colour in the site plan appended with the plaint and marked by letters ABCD. It was maintained that

the suit property was situated within the abadi deh of the village and the plaintiff has been using the same for the last more than 50 years. Plaintiff had constructed a boundary wall of about 4' x 10' on two sides of the suit property and as defendants threatened to dispossess the plaintiff forcibly, thus, the suit.

In defence, it was pleaded, inter alia, that plaintiff had no right, title or interest in Bara ABCD shown in the site plan, as the same exclusively belongs to Suresh Kumar-defendant No.1. Defendant No.1 also had two plots in the abadi deh, as depicted in the site plan. Plaintiff and his brother Jai Kishan were in occupation of their respective portions in the abadi deh, as shown in yellow colour in the site plan. Thus, there was no question of plaintiff being the owner in possession of the Bara ABCD.

On a due and comprehensive consideration of the matter in issue, both the courts below concurrently recorded that plaintiff failed to prove the identity of the property, as admittedly there was no record in regard to the ownership of the suit property within the abadi deh of the village. Plaintiff Sukhdev Singh conceded in his cross-examination that he did not know about the length and width of the area in question. Rather, he admitted that he had another Bara, but he did not know the number of the said property. Though, he claimed to have raised construction on the two sides of the property, but

conceded that he did not know as to when the boundary walls were raised on two sides of the Bara. The plea of the plaintiff that he had constructed a boundary wall measuring 4'x10' on the two sides of the property was also belied by the report furnished by the Local Commissioner. So much so, the site plan relied upon by the plaintiff remained unproved on record as neither the measurement of the suit property was depicted therein nor sketch map was drawn to scale. No draftsman was examined either to prove the said plan. To have a clear and correct perspective of the situation, and to elaborate upon the position on the spot, a Local Commissioner was also appointed, but yet there was ambiguity as regards the identity of the property vis-à-vis the stand set out by the plaintiff. The testimony of Jaipal (PW2) could also not be relied upon as he conceded in his cross-examination that he had deposed at the instance of the plaintiff and was not even aware of the contents of his affidavit (Ex.PW2/A). That being so, it was concluded that the dispute being as regards the immoveable property, provisions of Order 7 Rule 3 of the Code of Civil Procedure, required requisite details so as to identify the property. In short, plaintiff completely failed to prove his claim. Thus, the only or the inevitable conclusion that could be reached was that suit was liable to be dismissed.

Learned counsel for the appellant could not point out as to how the conclusions, that have concurrently been

recorded by both the courts below, 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. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

September 23, 2015
Rajan

(Arun Palli)
Judge