

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

**RSA No. 496 of 2014 (O&M)
DECIDED ON: OCTOBER 20, 2015**

JAGBIR & ANOTHER

.....APPELLANTS

VERSUS

RAJPAL AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the Local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or?**
- 3. Whether the judgment should be reported in the digest?**

Present:- Mr. Narender Singh, Advocate
for the appellants.

JASPAL SINGH, J

CM No. 1215-C of 2014

This is an application seeking condonation of delay in refilling the instant appeal.

In view of averments made in the application, the same is allowed and delay in refilling the instant appeal is condoned.

CM stands disposed of.

RSA No. 496 of 2014

Unsuccessful plaintiffs/appellants has preferred the instant appeal feeling dissatisfied against judgment and decree dated July 26, 2011

passed by learned trial Court, whereby, the suit for permanent and prohibitory injunction restraining the defendants from interfering in their peaceful ownership and possession as well as from raising construction over the disputed plot, was dismissed. The appeal preferred against the afore-said judgment and decree was also dismissed by lower Appellate Court vide judgment and decree dated July 22, 2013.

2. Aggrieved against the afore-said judgments and decrees, appellants/plaintiffs came up with this appeal.

3. The simple case of the appellants/plaintiffs before the Courts below as recapitulated from the facts is that they preferred a suit for permanent injunction seeking injunction against defendants restraining them from interfering in their peaceful possession claiming themselves to be the owners in possession. Whereas, defendants/respondents resisted the suit claiming that plot in question alongwith other adjoining land of Pana Choudharan which was reserved and left out for common and charitable purposes. Their further claim is that one Neki son of Puran, grand-father of plaintiffs/appellants earlier preferred a civil suit No. 117 dated April 15, 1948 against one Dhaja Ram in respect of the suit property as well as some other property that suit was finally dismissed. Their further claim is that defendants are not the owner in possession of any part of the suit property.

4. While assailing the afore-said judgments and decrees passed by both the courts below, it has been contended by learned counsel for the appellants that both the courts below have mis-appreciated the facts as well as evidence available on record. In fact, respondents have categorically

admitted that plaintiffs/appellants being member of Pana Chaudhran are entitled to use the suit land. In view of such an admission, appellants/plaintiffs are entitled to the injunction prayed for by them. Similarly, both the courts below have also fell in to grave error while observing that the appellants/plaintiffs did not disclose the previous litigation, which relates back to the year 1948. In fact the previous litigation has nothing to do with the present case, especially in the circumstances that plaintiffs/appellants had to knock the doors of civil court when the defendants/respondents extended threats to infer in their peaceful possession. Thus the findings recorded by learned trial Court which are affirmed by lower Appellate Court cannot be termed to be in consonance with the evidence available on file as well as settled cannons of law and thus, are not sustainable in the eyes of law and deserves to be set aside.

5. This Court has given an anxious thought to the submissions made by learned counsel for the appellants and has scrutinized the judgments delivered by both the courts below. Undoubtedly, the appellants/plaintiffs have filed a simple suit for injunction restraining the defendants from interfering in the peaceful possession over the property in dispute as well as from raising construction/foundation over the disputed plot. Though, appellants/plaintiffs have claimed themselves to be the owner of the property in dispute but to the utter surprise there is not an *iota* of evidence. Similarly, except the bald assertion that they are in possession of the property in dispute, there is no documentary evidence to support it.

Moreover, a perusal of evidence as well as facts of the case makes it crystal

clear that the appellants/plaintiffs have nothing to do with the property in question and they did not approach the court with clean hands. They intentionally withheld the opinion with regard to the previous litigation in respect of the disputed property initiated by their grand-father Neki Ram. The suit preferred by Neki Ram was dismissed by the then Sub Judge IInd Class Dalmiya Dadri vide judgment dated Samwat 30.05.2006 wherein, it was observed that Neki Ram had executed a relinquishment deed, which was produced in the afore-said suit as Ex.DW1/A. As per the contents of the said deed, Neki Ram alongwith other co-sharers of the land described therein had dedicated the same for charitable purposes. Once Neki Ram is no more either owner or owner in possession of any part of the disputed property after the execution of relinquishment deed, it is surprising how the appellants/plaintiffs have claimed themselves to be the owners in possession of the disputed property.

6. It is also well neigh principle of law that a person who is guilty of concealment of actual facts and did not approach to the court with clean hands does not deserves any consideration. Seeking equity must do equity which is lacking in the instant case. The judgments passed by both the courts below are absolutely in consonance with the evidence as well as legal proposition applicable to the facts and circumstances of the case in hand and do not call for any interference by this Court. There is no question of law involved in the instant appeal what to talk of any substantial question of law.

7. In the light of what has been discussed above as well as in view of concurrent findings of both the courts below, this Court does not find any

merit in the instant appeal. Accordingly, appeal stands dismissed whereby impugned judgments and decrees passed by both the courts below are upheld.

(JASPAL SINGH)
JUDGE

OCTOBER 20, 2015
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