

108.

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

Regular Second Appeal No.5179 of 2014 (O&M)

Date of decision: 15.12.2015

Joginder Singh

... Appellant

versus

Pavittar Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Naresh Prabhakar, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The second appeal is brought by the plaintiff against the judgments in suit for injunction that he was the owner in possession of the property and for mandatory injunction directing the defendant to remove the wall made upon the plaintiff's property. The case stood for consideration on mere oral assertions of the plaintiff and the defendant, each one claiming himself to be in possession. The defendant brought also a village official to state that the defendant was in possession of the property. The court reasoned that the plaintiff has to succeed on his own strength and with no documentary evidence proving his possession, the plaintiff's suit

ought to fail. This decision was affirmed in appeal.

2. The learned counsel for the appellant states that if there was any issue regarding title, he would prove his possession and since it was merely a suit for injunction, the court was unnecessarily raising an issue of title but dismissed the suit. I have no difficulty in understanding that in a suit for injunction, the issue of title may be irrelevant. However, if the plaintiff seeks for a relief of injunction on an assertion that he is actually in possession of the same and would offer no more than oral evidence as regards the so-called possession and the defendant also brings oral evidence that he is in possession, the court was entitled to look for better method for proof of possession, for, the plaintiff who came to court seeking for its assistance must satisfy to the hilt that the plaintiff was in possession of property. It will be unsafe to rely merely on oral assertions and if relative merits of the contentions were to be examined only on the touchstone of oral evidence, the courts below were justified in preferring the defendant's evidence and holding that the plaintiff ought not prove the case as contended by him. If there are observations about the plaintiff's claim to ownership, they are merely incidental and the plaintiff could not have been misled for want of even a specific issue. The plaintiff ought to have known that the crucial issue for suit for injunction was that he was in possession of property and if he must seek for mandatory relief

against the defendant for removal, he cannot secure that right unless he proved better title over the defendant. With no attempt made by the plaintiff to bring any better evidence to show that his own rights were superior to the defendant, the courts below were justified in dismissing the plaintiff's suit.

3. There is no scope for interference in second appeal. Second appeal is dismissed as devoid of merits.

(K.KANNAN)
JUDGE

15.12.2015
sanjeev