

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5286 of 2014 (O&M)
Date of Decision.19.11.2015

Gurbachan Singh

.....Appellant

Versus

Balbir Singh and others

.....Respondents

Present: Mr. Surinder Mohan Sharma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The defendants are the appellants before this Court. The 1st defendant is the father of defendant Nos.2 and 3 and he is the brother of the plaintiff. The plaintiff filed the suit for injunction stating that he was purchaser of the property which was a registered document dated 18.12.1991 from its previous owner Sham Lal and had contended that he had raised boundary wall around the plot in *lal lakir* which was also shown in the site plan. The defendant contended that there had been a partition in relation to the property between the family members and he was actually in possession of the same having obtained electric connection through unregistered agreement from one Pyare Lal dated 30.09.1995.

2. Adverting to the evidence of the plaintiff and the documents filed by him, the Court observed that the identity of the property with reference to the plan submitted by the plaintiff and the registered sale

deed proved that he was actually in possession of the property and the defendant who had contended that the property had been partitioned had not in any way proved the partition. Even the defendant himself had admitted that the so-called family arrangement evidenced through the partition was not even signed by the plaintiff. While the trial Court granted the decree which said that he did not advert to the issue of title and therefore, in appeal filed by the defendant he sought to prove his possession by filing a petition for appointment of a commissioner. The Appellate Court reasoned that the issue of possession cannot be determined by appointment of commissioner and since the title issue was itself not taken and plaintiff possession had been proved through the witness and the sale deed which had been relied on by the plaintiff, the trial Court's judgment was not required to be interfered.

3. Learned counsel appearing on behalf of the defendants would preface his arguments with the statement that the matter be referred to the mediation. I asked the counsel to argue the case on merits before it can be considered whether the case could be referred to the mediation or not. Learned counsel for the appellants makes out a point that he has obtained electricity connection which was the most prominent proof for his possession and the fact that the partition document was not proved or signed by the plaintiff could not have any bearing since it is the property situate in *lal lakir* and the registered document could not be expected to be made. If the trial Court had observed that the sale deed brought by the plaintiff went unrefuted and there were witnesses who spoke about the plaintiff's possession, the issue was surely relevant of whether there had been a partition in

respect of the property as contended by the defendant. If that partition was not established then the trial Court's observation regarding possession based on the sale deed in favour of the plaintiff and other oral evidence was preferfectly justified. The counsel for the appellants would argue that the sale deed in favour of the plaintiff itself did not relate to the suit property. I have gone through the grounds of appeal and also the statement filed by the defendant. There has been never such contention as now sought to be stated for the first time in second appeal.

4. There is no merit in the contentions for consideration. The second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

November 19, 2015
Pankaj*