

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**Regular Second Appeal No.5895 of 2014 (O & M)**

**Date of Decision:** *February 05, 2015*

**Gurcharan Singh**

..... APPELLANT(S)

*VERSUS*

**Pritam Singh & others**

..... RESPONDENT(S)

. . .

**CORAM:**     **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

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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**PRESENT:** -   Ms.   Anupam   Sharma,   Advocate,   for  
                         Mr. Manmohan Upneja, Advocate, for the  
                         appellant.

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**Jaspal Singh, J**

1.                    Challenge in this appeal is to judgment and decree dated August 7, 2014 passed by Ms. Jatinder Walia, Additional District Judge, Fazilka, whereby judgment and decree dated April 7, 2014 passed by Civil Judge (Junior Division), Fazilka, has been affirmed, vide which, suit of appellant – plaintiff seeking permanent injunction restraining respondents –

defendants from causing any type of forcible, illegal and unauthorised interference into his peaceful cultivating possession as owner and otherwise, dis-possessing him from land measuring 6 kanal 6 marla comprising Rectangle No.29 Killa No.23/2(2-7), Rectangle No.45 Killa No.21/1(3-5), 20/4(0-9), Rectangle No.46 Killa No.16/2/2(0-5), Khewat No.134/1, Khatoni No.277/1, Hadbast No.223 as per jamabandi for the year 2007-08, situated in revenue estate of village Deepulana, Tehsil Fazilka, except in due course of law, was decreed.

2. Shortly put, case of plaintiff is that he is in cultivating possession of disputed property and has been recorded as such in jamabandi pertaining to year 2007-08 as well as khasra girdawari relating to crops; Sauni in 2011 and Haari in 2012. Defendant No.1, in connivance with respondent – defendant Nos.2 to 5 threatened to interfere into plaintiff's peaceful possession illegally and forcibly which has necessitated filing of suit.

3. On the contrary, case of respondent – defendants is that land in suit as well as land comprised in Rectangle No.29 Killa No.23/12(4-14), Rectangle No.45 Killa No.20/3(3-6), rectangle No.46 Killa No.16/1(0-19), 16/2/1(3-8), owned and

possessed by respondent – defendant No.1, adjoins each other and under the garb of instant lis, plaintiff infact intends to grab his land. It is also case of defendants that parties have also raised construction of some houses in suit land but plaintiff has not produced and proved on record site plan.

4. From pleadings of parties, following issues were framed in order to settle the matter in controversy:-

“1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

2. Whether the plaintiff has no locus standi or cause of action to file the present suit? OD

3. Whether suit of the plaintiff is not maintainable in the present form? OPD

4. Relief.”

5. Parties were afforded ample opportunities to adduce evidence in respect of their case, pursuant to which, they lead oral as well as documentary evidence.

6. After hearing learned counsel for parties and analyzing evidence brought on record by parties, issue No.1 was decided in favour of respondent No.1 – plaintiff, whereas, issue Nos.2 and 3, onus of which was on appellant – defendants, were decided against them and in favour of plaintiff. Resultantly, suit of respondent No.1 – plaintiff was decreed as fully reflected in Para No.1 of this judgment.

7. Aggrieved against judgment and decree passed by learned Civil Judge (Junior division), Fazilka, appellants – defendant Nos.1 to 3 & 5 filed Civil Appeal No.174 of 2014 but that appeal was dismissed, vide judgment & decree dated August 7, 2014, affirming judgment & decree dated April 7, 2014 passed by learned Civil Judge (Junior Division), Fazilka.

8. Still being dis-satisfied, instant regular second appeal has been preferred by appellant – defendant No.2, Gurcharan Singh.

9. While assailing findings recorded by learned trial court affirmed by learned lower appellate court as well as judgments and decrees, it has been contended by learned counsel for appellant that both the courts below have apparently fell in error in not appreciating evidence in a proper perspective which has resulted into mis-carriage of justice.

10. Respondent No.1 – plaintiff has appeared in witness box as PW-1 and placed on record copies of jamabandi for the year 2007-08, Ex.P1 and khasra girdawari, Ex.P2. No other evidence has been brought on record by plaintiff to prove his case. Evidence produced by respondent No.1 – plaintiff does not prove that he is in cultivating possession of property in suit, whereas, over whelming evidence adduced by appellant –

defendant including sale deed dated December 15, 1990 executed by plaintiff in favour of Jagtar Singh son of Waryam Singh in respect of land measuring 18 marlas comprising Rectangle No.29 Killa No.23 min (0-18), Ex.D1, has been ignored and dis-believed without assigning any cogent reason. Courts below have also failed to appreciate legal proposition that once it is proved that houses are in existence, even then, entry showing cultivating possession in revenue record becomes meaningless. Thus, as per contention put-forth by learned counsel for appellant, following questions of law emerge for consideration:

“a) Whether the Ld. First Appellate Court was justified in dismissing the first appeal filed by Appellant against Judgment and decree dated 07.04.2014 passed by the Ld. Court of Ms. Vanita Kumari, PCS, Civil Judge (Junior Division), Fazilka?

b) Whether judgment and decree dated 07.04.2014 passed by the Ld. Court of Ms. Vanita Kumari, PCS, Civil Judge (Junior Division), Fazilka whereby permanent injunction granted to respondent No.1 is lawful?”

11. While concluding her arguments, learned counsel for appellant submitted that since judgments & decrees in question are against evidence available on file as well as legal proposition, therefore, appeal deserves to be admitted for final hearing.

12. This Court has given an anxious thought to aforesaid submissions and minutely scanned impugned judgments and decrees.

13. Respondent No.1 – plaintiff has filed a simple suit for injunction restraining appellant – defendants from causing any type of forcible, illegal and unauthorised interference into his peaceful cultivating possession over land in dispute. So, only cultivating possession on the date of filing of suit, over property in suit is to be seen. Respondent No.1 – plaintiff has placed and proved on record copy of jamabandi for the year 2007-08, Ex.P1, which makes it crystal clear that property in suit is owned and possessed by Pritam Singh – plaintiff. To the similar effect are entries in copy of khasra girdawari Ex.P2 pertaining to crop of Sauni 2011 and Haari 2012. Moreover, case of defendants is that land, owned and possessed by him adjoins disputed property and under the garb of instant lis, respondent No.1 – plaintiff intends to take forcible possession of their land. So far as possession of respondent No.1 – plaintiff over disputed property is concerned, even that has not been disputed by him. So far as documents placed on by contesting appellant – defendants are concerned, same do not help them in any manner as these do not relate to disputed property. Appellant –

defendants, during the course of their evidence, examined DW-4 Khazan Singh, Area Patwari. He has categorically stated, while subjected to cross examination, that as per record maintained by him, suit land stands recorded in the name of respondent No.1 – plaintiff Pritam Singh, as owner in possession and entries appearing in jamabandi and khasra girdawari are correct. Since appellant – defendants have nothing to do with property in question and respondent No.1 – plaintiff, Pritam Singh, has been established to be in actual physical cultivating possession of land in dispute, therefore, appellant – defendants have been rightly injuncted by learned Civil Judge (Junior Division), Fazilka while passing judgment and decree dated April 7, 2014 which has been subsequently affirmed by lower appellate court.

14. As an upshot of aforesaid discussion, it becomes crystal clear that instant appeal is nothing but devoid of any merit. None of substantial questions formulated by appellant, referred to above, in Para 10 of this judgment, at all arise. Accordingly, instant appeal is dismissed.

**February 05, 2015**  
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**(Jaspal Singh)**  
**Judge**