

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 6210 of 2014(O&M)
Date of decision : December 7, 2015

Kishori Lal(deceased) through L.Rs

..... Appellant

Versus

Balbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Karan Bhardwaj, 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?

Amit Rawal, J (oral).

CM No. 14809-C of 2014

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 50 days in refiling the appeal is condoned.

The application stands disposed of.

CM No. 14810-C of 2014

This is an application under Order 22 Rules 4 read with Section 151 CPC for bringing on record the legal representatives of respondent No.2, duly supported by an affidavit. The legal representatives of respondent No.2 are permitted to be brought on record as mentioned in the application subject to all just exceptions.

Registry is directed to make necessary correction in the Memo of Parties.

The application is disposed of.

RSA No. 6210 of 2014

The appellant-plaintiff is in Regular Second appeal against the concurrent finding of fact whereby the suit claiming permanent injunction restraining the defendants from taking forcible, illegal possession of the Taur located in Village Kala Sanghian Tehsil & District Kapurthala as well as for interference in the possession along with consequential relief of mandatory injunction to remove all sorts of malba, walls, pillars, gate etc.and handing over the possession of the said property has been dismissed by both the courts below.

Mr. Karan Bhardwaj, learned counsel appearing on behalf of the appellant submits that the suit was filed on the ground that the plaintiff has purchased a house in a public auction on 25.9.1956 and a sale certificate was issued by the competent authority on 10.12.1956. Due to heavy rain, in the year 1956 the said house had fallen and at the time of filing of the suit that area was in the shape of Taur (vacant land). The appellant is a patient of paralysis and the defendants had tried to take forcible possession and accordingly the suit was filed.

The defendants in written statement had allegedly set up a plea that the plaintiff has no locus standi to file the suit as the suit is barred by the law of limitation. There is pacca thara of 47 feet in length and 28 feet in width having 3 ½ feet height having a wall on the eastern side and the same adjoins the Haveli and there is no window or door opening towards Thara. The property in dispute

is being used by the residents of the village to perform their social and religious functions for the last 35/40 years.

He further submits that both the courts below have committed illegality and perversity in not referring to the report of the Local Commissioner and also the sale certificate. In the report of the Local Commissioner it has been mentioned that the site in dispute falls within the Lal Lakir and there is no record of the same with the Patwari Halqa. The evidence in the shape of documents produced on record proved the case of the plaintiff. In the cross examination of the witnesses the defendants have totally admitted the case of the plaintiff. During the pendency of the suit the defendants have constructed two walls on the two sides of the property in dispute, installed a gate and also raised wall and pillar. The application for amendment of the plaint was filed seeking mandatory injunction to direct the defendants to remove all sorts of malba, wall, pillar, gate etc. The same was allowed thus, the appeal involves substantial question of law.

I have heard learned counsel for the appellant and appraised the paper book.

Both the courts below have concurrently held that the plaintiff purchased the house belonging to Teja Singh and as per the site plan one side of the property is 16 feet and other side is 22 feet in length. He has purchased 22' x 16' of area. As per the site plan prepared by the Local Commissioner the house of Kishori Lal is shown to be on the southern side of the disputed plot. Disputed plot is shown to be in red colour. The area of house of Kishori Lal is

shown to be 47' x 36'. Whereas the disputed plot is of 47' x 28' area. Thus, total area of the house of Kishori Lal is 760 sq.feet and the area of disputed plot comes to 5776 sq feet. As per the site plan attached with the auction file the total area which the plaintiff has purchased in the auction comes out to 1414 sq.feet. Thus, the plaintiff could not seek injunction in respect of the area which is not owned by him rather failed to prove the case. It is a settled law that the plaintiff has to stand on his own legs and failed to discharge onus.

There is no merit in the appeal, much less there is no illegality in the impugned judgments and decrees of both the courts below.

Keeping in view the aforementioned facts, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

December 7, 2015
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