

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

RSA No.4547 of 2009 (O&M)
Date of decision : 23.02.2016

Santa and ors.

...Appellants

Versus

Kulwant Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Amarjit Markan, Advocate for the appellants.

Ms. Jyoti Sarin, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court, whereby suit for possession in respect of house No.1609/1, has been dismissed.

Mr. Amarjit Markan, learned counsel appearing on behalf of appellants-defendants submits that except the averments made in the plaint and the site plan, there is no other corroborative evidence which has been led on record to show that sale deed Ex.P4 pertained to house No.1609/1 as neither the boundaries, in the unamended or amended plaint, tally with the sale deed. No independent draftsman or demarcation report or local

commissioner has been examined to connect the property, in essence, the identity of the property could not be proved, whereas suit was based upon it. Sale deed Ex.P4 was in the name of grandfather of the plaintiff which has not been able to connect the possession of property which was sought to be taken through the intervention of the Court and the trial Court while relying upon the aforementioned documentary evidence, dismissed the suit. However, the lower Appellate reversed the findings by holding that site plan Ex.P3 and the averments made in the amended plaint connect the property with the sale deed Ex.P4. The aforementioned finding is totally based upon mis-appreciation and misreading of oral and documentary evidence and, therefore, following substantial questions of law arises for determination by this Court:-

1. Whether in the absence of any independent evidence or demarcation, the suit for possession without the identity of the property, was liable to be decreed?
2. Whether there has been illegality and perversity in misreading and mis-appreciation of the oral and documentary evidence?

Ms. Jyoti Sarin, learned counsel appearing on behalf of respondent No.1 submits that identity of the property is proved not only from the sale deed Ex.P4 dated 06.04.1944, site plan as well as sale deed of house No.1609/1 dated 05.08.1985. All these factors leads to irresistible conclusion in decreeing the suit. Lower Appellate Court being last Court of facts and law while decreeing the suit appreciated such evidence. Sale deed dated 02.01.1981 Ex.D1 pertains to house No.1601/1, whereas trial Court

has misinterpreted the sale deed of house No.1609/1. In para No.10 and 11 of the judgment under challenge, lower Appellate Court in extenso held that possession and identity of the property is connected with the sale deed. There is no illegality and perversity, much less, no substantial question of law arises for determination and prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit in the aforementioned appeal, much less, submission of Mr. Markan, for the reasons, that plaintiff miserably failed to prove on record any evidence to show the owner of the house except sale deed Ex.P4, boundaries of which did not tally as the sale deed executed by one Dasondha in favour of grandfather of the plaintiff do not connect or relate with suit property. No independent witness/evidence in the form of demarcation report or the assistance of local commissioner was taken on record, to connect the property. In a suit for possession, it is essential requirement of law to prove the identity, much less, connection of the property with the sale deed. In the absence of the same, plaintiff cannot seek the possession. In the previous round of litigation, brother of the respondent-plaintiff instituted the suit alleging the relationship of landlord and tenant but failed. No finding vis-a-vis the ownership was rendered in the aforementioned proceedings.

Keeping in view the aforementioned facts, I am of the view that Lower Appellate Court has completely been swayed away by noticing the House Tax Assessment Register which is not the document of title to claim the possession. The description of the sale deed even in the amended plaint has not been pleaded nor any evidence has been led in this regard.

Keeping in view the aforementioned facts and circumstances, judgment and decree of the lower Appellate Court is set aside. Substantial questions of law as noticed above are answered in favour of appellants-defendants and against the respondent-plaintiff. The suit of the respondents-plaintiffs is dismissed.

Appeal is allowed.

23.02.2016

pawan

**(AMIT RAWAL)
JUDGE**