

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

ESA No.8 of 2016(O&M)

Date of decision:17.5.2016

Udmi Ram

....Appellant

VERSUS

Suresh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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. B.K. Bagri, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against order dated 04.04.2012 passed by the Additional Civil Judge (Senior Division), Narnaul, allowing objections filed by respondents No.1 to 5 and the judgment dated 01.08.2015 passed by the Additional District Judge, Narnaul, whereby the order dated 04.04.2012 passed by the Executing Court was affirmed.

Hari Ram and Udmi Ram filed a suit for permanent injunction in which Hazari son of Budh Ram, Kishori son of Mitru, Durgaparshad son of Shankar, Khatik residents of mohalla Ravaka, Narnaul, were impleaded as defendants. The plea of the plaintiffs in the suit is that they are residents of mohalla Ravaka, Narnaul and the disputed property is a joint *sahan* shown in the site plan attached. There are three trees in the disputed property from the times immemorial. The disputed property is owned by the Municipal Committee, Narnaul and used by the plaintiffs as well as

other inhabitants of the locality and the defendants have got no right to raise any construction in the disputed property. The suit was decreed by the trial Court vide judgment and decree dated 28.01.1991. The decree holders filed an application for execution of the decree in the year 2002 in which the contesting respondents preferred an objection petition on the premise that the decree holders obtained decree by mis-statement of facts. There was a temple of Mahadev, Shiv Family and Hanuman Ji for the past several years and the judgment and decree was sought to be set aside on the grounds detailed in sub para a to d of para 2 of the order passed by the executing Court. The executing Court after getting reply of the decree holder and framing of issues detailed in para 4 of the order dated 04.04.2012 permitted the parties to adduce evidence in support of their respective pleas. After having heard counsel for the parties in the light of materials on record, the executing Court accepted plea of the objectors that the temple in question was constructed by the respondents more than 23-24 years ago and the execution petition filed by the decree holders is liable to be dismissed. As has been noticed hereinbefore, the order passed by the executing Court has been affirmed in appeal that came to be dismissed by the Additional District Judge, Narnaul.

Counsel for the appellant would submit that the objection petition preferred by the contesting respondents is based upon false facts and the findings recorded by the Courts below are unfounded. Further argued that it was fully proved on record that the property in dispute was an open chowk of mohalla Ravaka, Narnaul at the time of institution of the suit

I have heard counsel for the appellant, perused the paper-book particularly the order dated 04.04.2012 passed by the executing Court and dated 01.08.2015 passed by the Court in appeal.

Hari Ram and Udmi Ram filed a suit for injunction claiming the suit property to be a joint *Sahan* of residents of mohalla Ravaka, Narnaul. There is nothing on record suggestive of the fact that the plaintiffs filed the suit in a representative capacity or the defendants in the suit were sued in a representative capacity. That being so, it becomes apparent that two residents of the area obtained a decree for injunction qua disputed property alleged to be a *sahan* meant for residents of the area and owned by Municipal Committee, Narnaul against four others, arrayed as defendants. The objection petitioners had taken a plea that there is a temple of Mahadev, Shiv Family and Hanuman Ji built about 23-24 years ago and another temple was built by inhabitants of the mohalla about 8-9 years ago and the devotees do Puja/worship at the site. The executing Court on a detailed consideration of the evidence adduced by the parties recorded its finding with regard to existence of madi, chabutra and temple of Shiv Ji and Hanuman Ji in the disputed *sahan*. It was held to be existing prior to institution of the suit.

Counsel for the appellant has failed to point out that the findings recorded by the executing Court duly affirmed in appeal are either based on no evidence or the result of misreading and mis-appreciation of evidence on record. The proceedings conducted by the Courts below are in the nature of a suit and keeping in view the fact that consistent factual findings have been recorded by the Courts below, there is no scope for intervention by this Court unless the findings are proved to be perverse.

Counsel for the appellant has failed to advance any substantive argument much less to convince that the findings recorded by the Courts below are illegal or absurd.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed in *limine*. No order as to costs.

MAY 17, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE