

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

1. RSA No.3372 of 2010 (O&M)
Date of decision : 20.09.2016

Surinder Kumar @ Narinder Kumar

...Appellant

Versus

Shankar Dass

..Respondent

2. RSA No.3373 of 2010 (O&M)
Date of decision : 20.09.2016

Surinder Kumar @ Narinder Kumar

...Appellant

Versus

Shankar Dass

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vijay Lath, Advocate for the appellant.
(In both appeals)

Mr. Deepak Arora, Advocate for the respondent.
(In both appeals)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two appeals
filed at the instance of appellant-defendant.

The appellant-defendant is aggrieved of the judgment and

decree rendered by both the Courts below, whereby suit of the respondent-plaintiff for mandatory injunction holding him to be owner in possession of the plot, has been decreed, in essence, they have been restrained from interfering into the peaceful possession.

Mr. Vijay Lath, learned counsel appearing on behalf of appellant-defendant submits that both the Courts below have abdicated particularly lower Appellate Court in granting the status of the ownership to the plaintiff in absence of the prayer for declaration, much less, any oral and documentary evidence. Plaintiff has to stand on his own legs, in essence, discharge the onus as per the provisions of Section 101 of the Indian Evidence Act. Except the site plan, no other evidence has been led. He submits that de hors of the fact that the defendant's witnesses in bits and pieces stated something in favour of plaintiff but that does not suffice the requirement of law. The findings of trial Court that in one breath that plaintiff have failed to prove the ownership but in another, observed the accorded status of the ownership/possession. The lower Appellate Court has relied upon the cross-examination of the defendants DW3 and DW4. He submits that if the cross-examination is read in entirety, the focus was with regard to the ownership of house of the plaintiff, whereas property in dispute i.e. plot which, allegedly plaintiff, is using for securing his manures and other purposes. The property is situated within lal lakeer, there has to be a certain rapat roznamcha whereas on the contrary, the plaintiff sought partition of the property owing to sale deed dated 21.04.2003 but it has not been challenged so far, yet the Courts below have non-suited the defendant holding that predecessor-in-interest of the Vendor was not having the title.

There is no evidence to that effect. Finding is beyond the pleadings, much less, evidence, thus there is mis-direction and misconstrual resulting into gross illegality and perversity and thus urges this Court for setting aside of the findings of the lower Appellate Court.

Per Contra, Mr. Deepak Arora, learned counsel appearing on behalf of respondent-plaintiff submits that no doubt plaintiff did not seek any ownership but the findings to that extent are liable to be modified. The fact remains that categorical admission of the defendant's witnesses qua the possession of the plot, at least the injunction can be maintained, though lower Appellate Court has declined the relief of mandatory injunction. Since trial Court had decreed the suit in part by granting the injunction except land measuring 1 marla purchased by the defendant resulting into filing of two appeals. Appeal at the instance of the defendant has been dismissed and thereafter, appeal at the instance of plaintiff has been decreed in toto. Site plan Ex.P1 has been proved but there is no rebuttal evidence. Thus, there is no illegality and perversity, much less, no substantial questions of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book and record of the Courts below and of the view that findings rendered by the lower Appellate Court is not only fallacious but perverse. The lower Appellate Court has exceeded its jurisdiction in according the status of the plaintiff of ownership in the absence of any documentary evidence particularly when the claim in the suit was only of injunction. Except site plan Ex.P1, no other evidence has been led, in essence, the plaintiff has failed to discharge the onus of possession. De hors of the fact

that property is situated in lal lakeer or abadi. The statement of the witnesses both in chief/affidavit or cross-examination has to be read in entirety but not in isolation. Rustic villagers do not know the implication and may not vary to the question of the Advocate but that does not mean that the plaintiff is rely upon same. In fact he has to stands on his own legs and discharge the onus. In my view, the plaintiff has failed to prove the possession of the plot. The rationale behind that having put the question of ancestral property was in respect of the Village Chitton and not with regard to the suit property.

No doubt, this Court on earlier occasions had been framing substantial questions of law while deciding the appeal, but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in *Pankajakshi (dead) through LRs and others Vs. Chandrika and others*, AIR 2016 SC 1213, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether the provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitutional Bench of Hon'ble Supreme Court held that the decision in *Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others*, 2001 (4) SCC 262, applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

For the reasons aforementioned, I am of the view that the judgment and decree rendered by the Courts below are totally perverse and

erroneous and are hereby set aside. Suit of the respondent-plaintiff is dismissed.

Accordingly, both the appeals are allowed.

20.09.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No