

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

RSA-4368-2010

Date of decision : 21.10.2016

Jakir Hussain

... Appellant

Versus

Satbir Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Hooda, Advocate
for the appellant.

Mr. Ashu M. Punchhi, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit of the respondent-plaintiff has been decreed, in essence, the judgment and decree of the trial Court, has been set aside.

Mr. R.S. Hooda, learned counsel appearing on behalf of the appellant-defendant submits that respondent-plaintiff instituted, a suit giving the description of the property in the site plan by spreading it to form part of khasra No.120, whereas the defendant has been given the land, measuring 400 square yards, on lease, by Punjab Wakf Board in respect of Khasra No.125. In fact, the trial Court dismissed the suit, but the lower Appellate Court decreed the suit by protecting the possession except in due course of law. As per *Aksh Sazra* (Ex.PY), it is evident that there is existing plot on the southern side of Khasra No.125 having a length of 10 karam

between Khasra No.125 and *Phirni* of the Village, but the plaintiff claimed the length of the suit property to be 130 sq. fts. Ex.PX is the part of the Khasra No.125. Even the report of the Local Commissioner was also brought on record, yet the lower Appellate Court has committed illegality and perversity. The lower Appellate Court, has erroneously, read the statement of the appellant-defendant and DW-6, in different tenor, wherein it had been stated that the appellant-defendant does not have any concern with the property in dispute, thus, urges this Court for setting aside the findings under challenge.

Per contra, Mr. Ashu M. Punchhi, learned counsel appearing on behalf of the respondent-plaintiff submits that as per Ex.P-13, the land is *abadi deh* bearing khasra No.120, measuring 136 kanals. In fact it is the respondent-plaintiff, who has erected his house and given a number which is being maintained by the village. Injunction was sought in respect of Khasra No.120 and not Khasra No.125. In view of the cross-examination of the appellant-defendant, the lower Appellate Court, reversed the findings of the trial Court, while decreeing the suit. Nothing prevents the appellant-defendant to seek the demarcation, in case the identity of the property is in dispute as khasra numbers are different, particularly when appellant-defendant, did not have any grievance qua injunction, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. R.S. Hooda, as injunction had been sought for khasra No.120 for which he has not been able to place any documentary evidence.

The alleged submission of Khasra No.125 is neither here and there. As per

the report of the Local Commissioner, the name of the respondent-plaintiff did not figure therein. Mere apprehension of the appellant-defendant under the garb of the injunction that there would be any interference with regard to the Khasra No.125 is misplaced. The injunction granted by the lower Appellate Court is most innocuous, whereby the possession and forcibly interference has been protected, except in due course of law.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial questions of law arises for determination and accordingly, the appeal is dismissed.

21.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No