

207

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

**RSA-2574-2011 (O&M)
Date of decision : 10.05.2016**

Suraj Mal

... Appellant

Versus

Ram Niwas

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant.

Mr. H.N. Sahu, Advocate
for the respondent.

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)

The appellant-plaintiff is aggrieved of the dismissal of the suit vide judgment and decree rendered by the lower Appellate Court setting aside the judgment and decree of the trial Court seeking restraint orders by way of permanent injunction against the respondent-defendant not to interfere in the peaceful possession and forcibly dispossess from the plot of land measuring 7 marlas comprised Khewat No.403 Khatoni No.493 Rect. No.85 Killa No.26 having purchased vide sale deed bearing No.5569 dated 01.12.2004 situated in Om Nagar Colony, Opposite Cold Store, Jind.

Mr. C.B. Goel, learned counsel appearing on behalf of the

appellant-plaintiff submits that the simpliciter suit for permanent injunction was filed and the question of title was not raised, yet the Court found the appellant-plaintiff to be owner. The witness from the office of Electricity Department admitted that the electricity connection had been issued, whereas, on the contrary the respondent-defendant did not lead any evidence neither has been found to be owner of the plot, therefore, equity lied in the favour of the appellant-plaintiff, rightly so, the trial Court has decreed the suit, but the lower Appellate Court, without noticing the aforementioned facts, reversed the findings, thus, there is illegality and perversity and prays for formulation of the following substantial questions of law:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity?
2. Whether on preponderance of the evidence, the appellant-plaintiff is liable to seek injunction restraining the respondent-defendant not to interfere in the peaceful possession?

Mr. H.N. Sadhu, learned counsel appearing on behalf of the respondent-defendant submits that the judgment and decree rendered by the lower Appellate Court, being the last Court of fact and law, is based upon the appreciation of oral and documentary evidence and it has been held that that the appellant-plaintiff failed to get the property demarcated, therefore, failed to prove the possession, rather the respondent-defendant relied upon the sale deed (Ex.P-1) which shows him to be owner of the land which has been purchased from one Hanuman, and half share of the land was sold by Pawan, brother of the respondent-defendant and the sale deed (Ex.D-11) is in favour of the respondent-defendant, thus, urges this Court for affirming the findings

rendered by the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the plea of Mr. C.B. Goel, for, the evidence of the Electricity Department and the witnesses of the sale deed proved that the appellant-plaintiff is the owner and the electricity connection has also been issued, whereas on the contrary, the respondent-defendant failed to lead evidence. The Court was not enjoined upon to go into demarcation as it was not the case of the possession, on account of the encroachment for having supplied lesser area than mentioned in the sale deed. The trial Court examined the evidence and arrived at finding that the respondent-defendant admitted that he is residing in his house for the last 13 years with his family and one Ujala claimed the ownership of the property, but the fact remains that they did not stake any claim on the plot. In these circumstances, the lower Appellate Court ought not to have been interfered with the valid findings rendered by the trial Court decreeing the suit.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and that of trial Court is restored. The suit is decreed. The substantial questions of law as noticed above are answered in favour of the appellant-plaintiff and against the respondent-defendant.

With the aforesaid observations, the appeal stands allowed.

10.05.2016
yogesh

(AMIT RAWAL)
JUDGE