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

**RSA-3346-2011 (O&M)
Date of decision : 31.03.2016**

Yashpal

...Appellant

Versus

Yashpal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Sharma, Advocate
for the appellant.

Mr. Keshav Pratap Singh, Advocate
for the respondents.

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 findings rendered by the lower Appellate Court whereby the judgment and decree of the trial Court decreeing the suit, has been reversed.

Mr. Deepak Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that the predecessors-in-interest of the defendant had granted the rights to the predecessors-in-interest of the plaintiffs to plant mango trees on land measuring 12 kanals 03 marlas and this process continued for years together. However, owing to perceptible threat qua interference and dispossession, a cause of action arose and hence, suit for permanent injunction was filed. The trial Court on the basis of the oral and documentary

evidence found that the jamabandi for the year 1981 showed the payment of rent half of the income of the orchard and 50% viz-a-viz the dry trees. Reasoning assigned by the lower Appellate Court is that no rent receipt has been proved and therefore, the possession has not been proved is neither here or there, as there is a misreading and misdirection of the documentary evidence, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity or not?
2. Whether the appellant, who is in long and settled possession of the property, can be dispossessed except in due course of law.

Mr. Keshav Pratap Singh, learned counsel appearing on behalf of the respondents-defendants submits that the property was given to the predecessors-in-interest of the appellant and after demise, interest was divided between three brothers but only one opposed. At the best, he could not be admitting of injunction qua 1/3rd share of the entire land, even otherwise the revenue record, though has presumption, but the same has been rebutted to show that no rent receipt has been proved on record and all other brothers surrendered the possession in the year 2006, though, the land as on today is still vacant, in essence, no mango trees have been planted and therefore, the land is not yielding any income and therefore, the appellant-plaintiff is not entitled for injunction.

Mr. Deepak Sharma, in rebuttal, submits that there is a categorical admission of the respondents-defendants viz-a-viz mangos trees are standing on the land and therefore, the submissions qua vacant land is totally out of record.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appellant-plaintiff is only entitled for injunction qua his 1/3rd share, but cannot espouse the share of other tenants and this fact has been noticed by the lower Appellate Court holding that the suit was bad for mis-joinder of both the parties. The jamabandi of the year 1981 shows the payment of rent half of the income of the orchard and 50% of the dry tree. Once, the appellant-plaintiff has been able to prove possession, he cannot be dispossessed except in due course of law.

Keeping in view the aforementioned facts and circumstances of the case, the judgment and decree of the lower Appellate Court is hereby set aside and that of trial Court is modified holding that the appellant-plaintiff is entitled to injunction qua 1/3rd share of the land measuring 12 kanals 03 marlas. The suit is partly allowed. The substantial questions of law as noticed above are answered in favour of the appellant-plaintiff and against the respondents-defendant.

The appeal stands disposed of in the aforementioned terms.

31.03.2016
yogesh

(AMIT RAWAL)
JUDGE