

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1143 of 2012

Date of decision : February 11, 2016

Mahender and another

..... Appellant

Versus

Raj Bala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P. C. Chaudhary, Advocate
for the appellant.

Mr. Ajay Ghangas, Advocate for
Mr. Sanjeev Kodan, Advocate
for respondent Nos. 1 to 3.

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 plaintiffs are aggrieved of the order dated 22.9.2011 passed by the lower appellate court whereby the suit for possession and permanent injunction in respect of the house shown/described in the plaint as well as in the site plan has been dismissed.

Learned counsel for the appellants submits that the lower appellate court has committed illegality and perversity in holding that the dimensions given in the sale deed are totally different than the one mentioned in Ex.P-2 however, on going through the site

plan Ex.D-2 it is seen that they are correct but the lower appellate court has committed an error to refer the same.

He further submits that the courts below have failed to refer to the statement made in the previous suit, thus, erroneously non-suited the appellants viz-a-viz possession of the property in the absence of identification of the property, therefore urges this court to formulate substantial questions of law.

Learned counsel appearing on behalf of the respondents-defendants submits that the lower appellate court has rightly dismissed the suit and has drawn attention of this court to the finding rendered by the lower appellate court and prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that in order to seek possession it is essential and necessary to prove identity of the property. For the sake of brevity para 15 of the judgment of lower appellate court reads thus:-

They have kept reliance on sale deed Ex.P1 alongwith the sale deed Ex.P1, there was site plan. According to the site plan attached with the sale deed, the Hindi version of the same has been placed on the record by the appellants with the appeal and according to it in the North two streets and door, South the property of Muslim, whereas in the plaint they in the South of house in dispute has shown house of Tek Ram, their father, in the North-there was a property of Budhu Kumhar and house of Maman has been shown, whereas in the case in hand, house of Hari Ram has been shown. In site plan attached with the sale deed Ex.P1 in the West- there is a house of

Giani and in the case in hand in the plaint house of Ramphal and Giani has been shown. In this way, it is clear on the record, the house in dispute infact is not the part of property which grandfather of respondents purchased vide sale deed Ex.P1. The view this court is cemented by the own admission of respondent Mahender Singh as PW-1 in his cross examination wherein, he admitted the house owned by Ram Kishan is situated on Matindu road and in the site plan attached with the sale deed Ex.P1 Matindu road, no where stands. Admittedly, Smt. Shanti is widow of Ram Kishan whom allegedly appellants inducted as license in the house in dispute after the death of her husband Ram Kishan. When the Ram Kishan had has owned house at Matindu road, then, there was no question on the part of the respondents to inducted Smt. Shanti as license in the Southern portion of the house in dispute. Their version is highly improbable. He (Mahender) PW-2 in his cross examination also admitted the electricity meter in the house in dispute is in the name of the appellants. He also admitted late Ram Kishan husband of Smt. Shanti encroached upon the Municipal plots for the last more than 30 years on which he constructed his house. In further part of his cross-examination admitted the plot of Municipal Committee, Kharkhoda which was allegedly encroached upon by late Ram Krishan is on the Northern side, of house in dispute. There is a Matindu road on Southern side and house of Surajbhan, east house of Puran and Kishandei etc, West Meva Khatik etc. and in between the house in dispute and house of Ram Kishan there is a street. He also admitted respondent are in possession of 500 sq. yards area of the house in dispute, whereas respondents are claiming decree against the appellants for area of 747 ½ sq. yards. The dimensions of the property narrated

hereinbefore by Mahender PW1 tallies with site plan DW-2 relied upon by the appellants. In this way it has clearly been established on record, infact the house in dispute was previously under the possession of Smt. Shanti and after her death in possession of the appellants is not the house in dispute as alleged by the respondents. They have miserably failed to prove the identity of the property in dispute and consequently they are not entitled to the decree as prayed but the learned trial court has not appreciated this fact and committed legal error. “

In view of the aforementioned finding, I am of the view that the trial court had erroneously decreed the suit without noticing the fact that identity of the property has not been proved. During the course of evidence it also surfaced that properties mentioned in the sale deed and the site plan annexed with the same, their boundaries do not tally with the actual position at the spot, thus, the plaintiff miserably failed to discharge onus by seeking demarcation of the property and to connect the property sought to be taken into possession. Rather, plaintiff in his cross examination admitted that the house owned by Ram Kishan is situated on Matindu road and in the site plan, attached with the sale deed Ex.P-1 there is no existence of Matindu road.

Keeping in view the aforementioned facts, I am of the view that the appellants-plaintiffs miserably failed to prove the identity of the property nor has substantiated its claim viz-a-viz possession. However, this would not preclude the plaintiffs, for the purpose of identification to get the property demarcated.

I do not intend to differ with the finding rendered by the lower appellate court which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgment and decree of the lower appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

February 11 , 2016
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