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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1170-2012 (O&M)
Date of decision : 02.12.2016

Diwan Singh and others

... Appellants

Versus

Kanshi Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Shekhawat, Advocate
for the appellants.

Mr. Suman Jain, Advocate
for respondent Nos.1 & 5.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the findings rendered on issue No.1 in a suit seeking following relief:-

“Suit for permanent injunction to the effect that the contesting defendants No.1 to 4 may kindly be restrained from interfering in the use and possession of the land and pacca house, rooms, small room, shops, which have been shown as mark ABCD in the map enclosed with the plaint situated at village Satnali, Tehsil and District Mahendergarh bounded as East Road Pacca Railway Station, Satnali; West – Path 17 feet; North – Property to Baijnath 72 feet; North – Property of Ajit Master ground floor and 1st floor which have been shown in the site plan as EFGH in khasra No.700 area measuring 0 kanal 5 marlas situated at Village Satnali as per Jamabandi for the years 1994-95 and is part of Khewat No.11 Min and Khatoni No.39 and in which they work as shopkeepers and should not

interfere in the use and possession of the shop of the plaintiff and defendant No.5 and should not forcibly take possession on any part of the aforesaid property and should not mortgage, sell, release or gift the said property to any other person and they should be restrained from creating any kind of charge or any part of the aforesaid property and if contesting defendants No.1 to 3, by using their manpower, illegally take possession during the pendency of the suit or create any charge, the same may be demolished and may be brought to its original position and a decree of possession may be passed”.

Mr. N.S. Shekhawat, learned counsel appearing on behalf of the appellants-defendants submits that in a suit for permanent injunction, the question of ownership should not have been granted in favour of the appellants-plaintiffs as in the earlier round of litigation, one of the plaintiffs, who was the defendant No.6 i.e. in the judgment and decree dated 17.12.1990 (Ex.D8), was not held to be the owner. The findings should be rendered as *obiter*, leaving the parties to claim the title. He does not dispute the grant of injunction at this stage.

Mr. Suman Jain, learned counsel appearing on behalf of the respondent Nos.1 & 5, submits that he has also no objection with regard to the granting of injunction as primary relief in the suit was only for prohibitory injunction viz-a-viz the forcible interference and creator of the mortgage deed, lease deed, etc., as indicated above.

In view of the consensus arrived at between the parties, the judgment and decree of the lower Appellate Court viz-a-viz granting the injunction on the basis of the documentary evidence qua possession is upheld and the finding rendered on issue No.1 is held to be *obiter*.

The parties are at liberty to claim viz-a-viz the title in the

independent proceedings.

With the aforementioned observations, the appeal stands disposed of.

02.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No