

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

RSA-72 of 2011 (O&M)

Date of decision: 29.04.2016

Lichhmi and others

...Appellants

Versus

Daya Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Lalit Yadav, Advocate for
Mr. S.K. Hooda, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

The suit for permanent injunction filed by the plaintiff/respondent was decreed by the trial Court vide judgment and decree dated 06.11.2009 restraining the defendants from taking forcible possession of the plot and raising the construction and interfering in the same.

2. Aggrieved against the findings of trial Court, the defendant/appellants filed an appeal which was dismissed by the 1st Appellate Court, vide judgment and decree dated 15.10.2010.

3. The 1st Appellate Court affirmed all the findings

recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellants.

4. On behalf of the appellants, it is contended that both the Courts below have committed a grave error while decreeing the suit of the plaintiff/respondent. It has been duly proved on record that the appellants were in possession of the suit land since 1973 till date. Both the Courts below have wrongly relied upon the report of Local Commissioner, Ex.P1 which was not proved because the original report had not been produced and only the copy of the report was placed on record. The respondent was very much aware of the fact that the appellants were in possession of the suit land since 1973 whereas, the suit was filed in the year 2000, hence, the same is not maintainable but this aspect has also been overlooked by both the Courts below. Further, the appellants were not party to the civil suit in which decree dated 16.10.2000 was passed, whereby plot No.450/2, the suit property, was allotted to the respondent, hence the same is not binding upon the appellants.

5. Heard, the learned counsel and perused the record carefully.

6. In the instant case, the suit land comprised in plot No.450/2 measuring 193 sq. yards was partitioned by way of civil Court decree in favour of the plaintiff/respondent. As per the written statement of the defendant/appellants, have asserted their possession over plot No.450/1 since 1973 and the suit property i.e. plot No.450/2 was adjoining to their plot No.450/1 and they are in possession of the same since 1973 and they have planted kikar trees over land in question. However, there is nothing on record to prove their ownership over the suit property. Even, their adverse possession is not proved, whereas, the plaintiff/respondent was allotted the suit property on the basis of Civil Court decree dated 16.10.2000. The possession was delivered to the plaintiff/respondent herein on the basis of report of local commissioner who proved that the suit land was lying vacant and the possession of the same was delivered to the plaintiff/respondent and his brothers. The argument of learned counsel that appellants were not party to the suit, is devoid of merits as they have already been allotted their separate shares out of the joint land after partition. Further, the argument that appellants were in possession of the suit property since 1973 is also devoid of merits as there is nothing on record to support the

assertion.

7. Therefore, in view of the above facts and circumstances, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left un-addressed. Judgments and decrees of both the Courts below are affirmed.

8. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed in liminie.

29.04.2016

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(JITENDRA CHAUHAN)
JUDGE