

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

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RSA 4824 of 2012

Date of decision: 20.05.2016

Harnek Singh and others

.....Appellants

Versus

Harbhajan Singh

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. D S Gurna, Advocate
for the appellants

Mr. S S Momi, Advocate
for the respondent

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J. (Oral)

The present appeal has been directed against the consistent findings recorded by the Courts below whereby suit filed by Kartar Singh, predecessor-in-interest of the appellants for permanent injunction was dismissed by the learned trial Court vide judgment and decree dated 18.09.2010 and the appeal preferred by Harnek Singh and others did not find favour with the Additional District Judge, SAS Nagar Mohali and was dismissed vide judgment and decree dated 29.08.2012.

Kartar Singh (since deceased) staked his claim for permanent injunction on the premise that he along with other co-sharers is the owner in

possession of the land fully described in head note of the plaint. Portion 'ABCD' is a part of khasra No. 1023/994/975/345 and he has got prepared a site plan for explaining position of khasra number. It is further averred that the defendant is not a co-owner in the land and, therefore, he has no right to interfere in peaceful possession of the plaintiff and other co-sharers or make any passage in portion shown as 'ABCD' in the site plan.

The respondent/defendant filed the written statement with the averments that the suit property is situated within old *abadi* and redline of the village and is a part of residential house of the defendant which was constructed by his ancestors long back. The defendant uses the disputed property for miscellaneous purposes and has stored bricks and other domestic articles. The water outlet of the residential house of the defendant falls in the same.

On due consideration of rival submissions made by counsel for the parties in the light of materials on record, the trial Court in para 12 of the judgment has held that the plaintiff represented by his LRs has failed to establish the measurement, dimensions, boundaries and identity of the suit property and as such, he is not entitled to the relief of permanent injunction. As has been noticed hereinbefore, the findings recorded by the trial Court have been affirmed in appeal.

Counsel for the appellant would contend that as the respondent/defendant is not a co-sharer in the disputed khasra number, failure of the appellant to give the area and dimensions of the property in question would not entitle the respondent to interfere in possession of the suit land, co-owned by the appellant and others. It is further argued that purchase of 01 biswa of land by the respondent during pendency of suit

does not entitle him to claim that he being a co-owner of the suit property cannot be restrained by way of an injunction to enjoy the joint property. It is further argued that the appellate Court has wrongly held that the appellant can take recourse to remedy of seeking partition of the joint land instead of filing a suit for injunction.

Counsel for the respondent, on the contrary, has submitted that consistent findings of fact recorded by the Courts below are not amenable to challenge in exercise of jurisdiction under Section 100 of the Code of Civil Procedure (in short, CPC). It is further submitted that as the respondent is one of the co-owners in khasra No. 1023/994/975/345, the same also disentitles the appellants to pray for injunction.

I have heard Counsel for the parties and perused the paper book particularly the judgments passed by the Courts below.

Kartar Singh, predecessor-in-interest of the appellants sought injunction in regard to portion 'ABCD' stated to be part of khasra No.1023/994/975/345. During the course of hearing, counsel for the appellants has provided copy of the site plan. Perusal thereof would make it evident that neither the area nor dimensions of the site in dispute have been given. The learned trial Court has noticed that the witnesses examined by the appellants/plaintiffs have given contradictory version with regard to the measurement, dimensions and boundaries of the suit property. As per the settled position in law, the plaintiff is required to plead and prove identity of the suit property to become successful before a Court of law. Order VII of the Code of Civil Procedure deals with plaint. Rule 1 of Order VII provides for particulars to be contained in plaint in every suit. Rule 3 of Order VII envisages the particulars required to be contained in the plaint

where subject matter of the suit is immovable property. A relevant extract from Order VII Rule 3 reads as follows:-

“It is enjoined upon the plaintiff filing a suit in regard to immovable property that he should describe the property sufficient to identify it.”

Counsel for the appellants is not in a position to assail correctness of factual findings recorded by the Courts below that the appellants have not been able to establish identity and extent of the property in dispute. That being so, I do not find any merit in contention of the appellants that the findings recorded by the Courts below suffer from any error much less perversity warranting intervention.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

20.05.2016
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