

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1404 of 2013 (O&M)
Date of Decision : 29.11.2016

Raj Kumari Sarvesh Kaur and others

....Appellants

Versus

Municipal Corporation, Patiala through its Secretary & ors.Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the appellants.

Surinder Gupta, J.

This is appeal against concurrent judgments and decree of Courts below whereby suit filed by plaintiffs-appellants seeking the relief of permanent injunction restraining the defendants-respondents from interfering in their peaceful possession over suit land situated at Patiala opposite to Head Post Office comprised in *khewat* no. 238 (0-14) measuring about 700 sq. yards as shown in site plan (Ex. PW-6/B), was dismissed.

2. While seeking the relief of injunction it was incumbent on plaintiffs-appellants to prove their possession over the suit land but the Court below on appraisal of evidence observed that plaintiffs have not been able to produce any evidence in support of their claim. Reference in this regard can be made to observations of learned Civil Judge (Junior Division), Patiala in para 29 of the judgment, which is extracted as follows:-

“29. It is further opined that the Court has to see the quality of the witnesses but not the quantity. The plaintiffs examined as well as nine witnesses but no one succeeded to prove the ownership or possession of the plaintiffs

over the property in dispute. PW-1 to PW-4 are the formal witnesses. Fatehjit Singh, who prepared the site plan also admitted that he has not seen any document of ownership of the property. He has not stated even a single word regarding the possession of the plaintiffs over the land. He has only proved the site plan prepared by him which is Ex. PW-6/B. As well as Pawan Kumar Kanoongo, is concerned he has proved the demarcation report, but as per his report the demarcation was not possible. His statement also does not support the contention of the plaintiffs. PW-7 and PW-8 are also the formal witnesses again. Ramnish Kaur PW-9 herself failed to prove its ownership and possession over the land in question.....”

3. It is evident from the above observation that appellants have failed to prove their title or possession over the suit property. Appellants are claiming possession over the land which is part of *khasra* no. 238 and have shown the same as existing between Rajbaha (tributary) and Army School boundaries. Ist Appellate Court took note of this fact and observed in para 30 that as per sale deed (Ex. P-1) executed by predecessor-in-interest of plaintiffs in favour of defendants-respondents no. 3 and 4, boundaries of property sold, have been described. There is no mention of property of vendors/appellants adjoining the land sold to defendants-respondents no. 3 and 4. Boundaries of the land measuring 3.24 acres sold by Raja Bhaljinder Singh as mentioned in sale deed (Ex. D-1) are as follows:-

North : Horticulture Garden of the Government.

South : Rajbaha and road leading to Phul Cinema

East : Banglow of Uttam Singh and plots of Yadvindra Colony

West : Circular crossing of the roads leading to Lahal Colony, Bhupindra Nagar road and Leela Bhawan road

4. The plan of site sold was also attached with the sale deed wherein also no land owned by vendors on either side of land sold to defendants-respondents no. 3 and 4 was reflected. Onus was very heavy on plaintiffs-appellants to prove the existence of suit land, their title and possession in order to claim the relief of injunction.

5. Learned counsel for appellants has tried to refer to various documents but could not refer to any evidence on record which could show that suit land is owned and possessed by plaintiffs. Even very existence of suit land owned by plaintiffs is not proved.

6. On perusal of judgments of Courts below and lower Court record, I find no legal or factual infirmity therein calling for any interference. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

November 29, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No