

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

RSA No.1586 of 2013 (O&M)

Date of Decision.29.09.2016

Baldev Singh

.....Appellant

Vs.

Balwinder Singh and others

.....Respondents

Present: Mr. Hardip Singh, Advocate
for the appellant.

Mr. S.S. Swaich, Advocate
for the respondent Nos.1 to 3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

Appellant-defendant No.2 is aggrieved of the decretal of suit for permanent injunction whereby restraint order against defendant Nos.1 to 7 to interfere in the possession of the plaintiffs as owners of land measuring 2 marlas, has been passed.

Mr. Hardip Singh, learned counsel appearing for the appellant submits that the suit aforementioned was filed on 13.10.2004, taken up on 14.10.2004 and was adjourned to 18.10.2004 for service. However, in the meantime, respondents-plaintiffs moved an application for appointment of local commissioner, who at the back of the appellant gave a report that the respondents-plaintiffs are in possession. In fact, the appellant-defendant No.2 had been in possession since long and raised construction and therefore, injunction granted is not sustainable in the eyes of law. Both the

judgments and decrees. The appellant-defendant had been in possession for the last 20 years having construction thereon. The Courts below have committed illegality in relying upon the statement of PW2, Harbans Singh, who was nursing animosity against the appellant, thus, the judgments and decrees passed by the Courts below relying upon the report of the local commissioner, are liable to be dismissed by formulating the substantial questions of law as formulated in the memorandum of appeal.

Per contra, Mr. S.S. Swaich, learned counsel appearing for the respondents No.1 to 3 submits that the documentary evidence placed on record i.e. site plan and the report of the local commissioner, statement of PW-2 leads to irresistible conclusion that the respondents-plaintiffs were in possession. The copy of the jamabandi tendered also proved the same fact. The concurrent finding of fact and law based upon the appreciation of oral as well as documentary evidence cannot be interfered unless there is gross illegality and perversity. DW-1 in cross-examination deposed that his property is situated on both side of the property in dispute, therefore, they had no right and claim in the suit property, thus, urges this Court for confirming the judgments and decrees under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the appellant-defendant No.2 has miserably failed to prove possession for the last 20 years. No documentary as well as oral evidence has come on record whereas the local commissioner's report proved the possession of the plaintiffs. It is a matter of record that respondents-plaintiffs had sought possession on the basis of the ownership whereas the appellant-defendant No.2 is not the owner. In my view, the injunction granted by the Courts below is based upon possession.

For the foregoing reasons, the judgments and decrees passed by the Courts below are confirmed as the same are based upon the correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 29, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No