

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

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RSA 2367 of 2013 (O&M)
Date of decision: 31.05.2016

Anoop Singh and another

..... Petitioner

Versus

Sunita and another

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Mohnish Sharma, Advocate
for the petitioners

Mr. D K Tuteja, Advocate
for respondent No. 1

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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.

The present appeal has been directed against the consistent findings recorded by the Courts below whereby suit filed by the appellants was dismissed by the learned trial Court vide judgment and decree dated 31.07.2009 and the findings recorded by the trial Court have been affirmed in appeal by the Additional District Judge vide judgment and decree dated 18.11.2011.

The appellants prayed for grant of permanent injunction qua suit property, detailed in head note of the plaint on the premise that they are proprietors of Pana Aasran of Village Kheri Sampla (in short Pana) having rights in shamlat deh and abadi deh. The respondents/defendants are neither

proprietors of Pana nor residents thereof as respondent No. 1 is outsider and had migrated from Pakistan. The abadi deh of Pana was partitioned in civil suit No. 141/215 of 25.05.1962 titled Surja etc. versus Duli Chand etc. decided on 27.07.1964 in which plot No. 89 measuring 240 square yards was reserved for the purpose of construction of latrine and other purposes. Respondent No. 1 in collusion with respondent No. 2 are threatening to interfere in peaceful possession of the appellants and raise construction on the suit land.

On consideration of pleadings of the parties, evidence adduced and rival submissions made by their counsels, the learned trial Court recorded findings on issues No. 1 to 3, taken up jointly against the appellants/plaintiffs and as a sequel thereto, the suit was ordered to be dismissed. As has been noticed herein before, the appeal preferred by the appellants did not find favour with the first appellate Court.

Counsel for the appellants has submitted that the appellants being pretty senior in age were rendered handicap to produce a copy of the judgment and decree dated 27.07.1964 passed in Civil Suit No. 141/215 of 25.05.1962. It is further submitted that a copy of Field Book containing entry with regard to plot No. 89 was marked as exhibit but the Courts below wrongly and illegally refused to rely upon the document in favour of the appellants.

Counsel for the respondents, on the contrary, has supported the consistent findings recorded by the Courts below with the submissions that as the appeal does not give rise to a substantial question of law for adjudication, the findings recorded by the Courts below are liable to be affirmed. It is further argued that as the appellants failed to adduce

satisfactory much less cogent and convincing evidence to establish their claim that plot No. 89 belonged to Pana or the same was reserved for construction of latrine and other purposes in view of decision dated 27.07.1964, therefore, no error much less illegality can be found in the judgments passed by the Courts.

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

It is an admitted position of the case that as per claim of the appellants, the suit property was the subject matter of litigation i.e. Civil Suit No. 141/215 titled Surja etc. versus Duli Chand etc. decided on 27.07.1964. Counsel for the appellants has fairly conceded that the judgment and decree passed in that suit has not been produced on record despite ample opportunity provided to the appellants. As the appellants failed to produce a copy of judgment and decree dated 27.07.1964, their claim qua Plot No. 89 was either the subject matter of the said litigation or the same was reserved for the purpose of construction of latrine etc. becomes untenable. This apart, failure of the appellants to produce a copy of the judgment raises an adverse inference against them that there was no such finding recorded in the earlier litigation that plot No. 89 was reserved for construction of latrine and other purposes.

The Courts below have refused to rely upon Field Book Ex. P2/A for want of proving the document in accordance with law by examining the concerned official from the department of revenue. Counsel for the appellants has not advanced any argument that document Ex P2/A is admissible in evidence without examining a witness to prove its correctness and authenticity. As per the settled position in law, mere marking of a

document does not dispense with its proof in accordance with the provisions of the Evidence Act, 1872. As the appellants neither produced a copy of judgment dated 27.07.1964 nor proved document Ex P2/A, in accordance with law, I do not find any reason to differ with the findings recorded by the Courts below in exercise of jurisdiction under Section 100 CPC.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

31.05.2016
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