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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-407-2013 [O&M]

Date of Decision : February 2nd, 2016

Ram Saroop Baghi

.... Appellant

Versus

Romesh Kumari and another

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. Naresh Gopal, Advocate,
for the appellant.

Mr. Vishal Aggarwal, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby suit filed by Shankar Singh for permanent injunction was decreed by the Court of first Instance vide judgment and decree dated 4.12.2006. The appeal filed by Ram Saroop Bagi, defendant [appellant herein] was dismissed by learned Additional District Judge, Gurdaspur vide judgment and decree dated 1.10.2012.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

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3. Relevant facts of the case for the purpose of decision of this appeal; that plaintiff Shankar Singh and his wife Smt. Amro Devi and son Amir Singh were originally owners in possession of land measuring 01 kanal 07 marlas comprised in khasra No. 2R/21 in equal shares. Smt. Amro Devi sold 6 Marlas of land out of that khasra number to Roop Lal son of Chet Ram and others and mutation No. 2621 was sanctioned. Separate khasra No. 2R/21 was carved out and same was re-numbered as 2R/21/1. Amir Singh, the other co-sharer also sold his 1/3rd share in the land of the plaintiff and Amro Devi and mutation No. 2933 was sanctioned. The plaintiff is the owner of land measuring 01 Kanal 01 Marla and raised construction of thatched hut and a 'khurli' over the suit land. The defendant has asserted his claim on 6 Marlas of land bearing khasra No. 2R/21/1 whereas the plaintiff was the owner of khasra No. 2R/21/2.

4. On the pleadings of the parties, issues were framed. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decreed the suit of the plaintiff holding that the plaintiff is owner in possession of land measuring 1 kanal 1 marla bearing khasra No. 2R/21/2 and as such, the defendant was restrained from interfering, dispossessing and raising any structure over the suit land. The appeal filed before the Court of first Appeal was also dismissed. As such, the present Regular Second Appeal.

5. Learned counsel for the appellant submitted that the defendant is in possession of the suit land for the last more than 20 years and constructed a thatched hut over the suit land and used the same as kitchen. The Courts below have not appreciated the real controversy and

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misread the evidence resulting into erroneous findings and prayed that the appeal be accepted.

6. Learned counsel for the respondents took the plea that the matter in controversy is very simple because on facts, there is no dispute. The findings of fact recorded by both the Courts below are based on oral and documentary evidence available on the file and the report of Local Commissioner, Shri Ashok Sharma, Advocate. He prayed that the present appeal be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the Courts below while recording findings of fact placed reliance upon report of the Local Commissioner, who had located khasra No. 2R/21/2 with the help of the parties, measuring 1 Kanal 1 Marla and found one thatched hut thereon which was having one kitchen, utensils and some of the kitchen items. As per plaintiff, the suit is regarding khasra No. 2R/21/2. The thatched hut falls in khasra No. 2R/21/1 and not in khasra No. 2R/21/2. That way, the version of the defendant that he was claiming possession of khasra No. 2R/21/2 as thatched hut was constructed on the same, is factually incorrect. To that effect, the concurrent findings have been recorded by both the Courts below on the basis of oral and documentary evidence available on the file and there are no ground to interfere and set aside the said findings. There is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs.**, JT 2001(2) SC 407.

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9. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 2nd, 2016
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