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

Date of decision : 02.08.2016

1.

RSA-441-2013 (O&M)

Balwant Kaur

... Appellant

Versus

Gurdeep Singh and others

... Respondent(s)

2.

RSA-2501-2015 (O&M)

Balwant Kaur

... Appellant

Versus

Gurdeep Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.K.S. Phoolka, Advocate
for the appellant(s).

Mr. Rajan Bansal, Advocate
for respondent Nos.1 to 3.

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?

AMIT RAWAL, J. (ORAL)

CM-1190-C-2013 IN RSA-441-2013

For the reasons stated in the application which is duly
supported by an affidavit, the delay of 22 days in the filing the appeal is

condoned.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of the appeal bearing **RSA No.441 of 2013** titled as **“Balwant Kaur V/s Gurdeep Singh and others”**, filed at the instance of the appellant-plaintiff, whereby the civil suit bearing No.981 of 2007 seeking permanent injunction has been dismissed and another appeal bearing **RSA No.2501 of 2015** titled as **“Balwant Kaur V/s Gurdeep Singh and others”** filed at the instance of the appellant-defendant, whereby the civil suit bearing No.683 of 2007 seeking declaration and permanent injunction has been decreed.

Mr. P.K.S. Phoolka, learned counsel appearing on behalf of the Balwant Kaur i.e. appellant-plaintiff in RSA No.441 of 2013 and appellant-defendant in RSA No.2501 of 2015 submits that suit for injunction was filed against Gurdeep Singh qua forcible interference and dispossession on the ground that Balwant Kaur is in possession of the property. The Courts below did not appreciate the oral and documentary evidence and dismissed the suit on the ground that the no evidence qua possession was proved. Gurdeep Singh filed a suit for declaration, as title was under cloud, the same has been decreed by relying upon the inadmissible evidence, thus, there is illegality and perversity. He further submits that Gurdeep Singh has not been able to prove the possession and therefore, in the absence of the relief of possession, the suit was not maintainable, thus, urges this Court for formulation of the substantial questions of law as drawn in the

memorandum of appeals.

Mr. Rajesh Bansal, learned counsel appearing on behalf of the respondent(s)-defendant(s) in RSA No.441 of 2013 and respondent(s)-plaintiff(s) in RSA No.2501 of 2015 submits that Balwant Kaur miserably failed to lead the evidence with regard to the possession and the injunction was except in due course of law. In the suit for declaration, the party has consistently been found to be in possession and therefore, the relief of possession was not sought and it was not a simpliciter suit for declaration, but consequential relief of injunction restraining Balwant Kaur from interference, thus, urges this Court for dismissal of the appeals.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. P.K.S. Phoolka, for, Balwant Kaur has failed to place on record any evidence with regard to her possession. On the contrary, Gurdeep Singh, the owner of the property, has been held to be owner, much less, found to be in possession and therefore, the suit for declaration qua consequential relief of injunction would be maintainable. Had there been a finding with regard to the possession perhaps, occasion would have arisen for seeking the possession. Be that as it may, the fact remains that once, Balwant Kaur has failed to prove any document of title, much less, possession, in my view, the findings arrived at by both the Courts below in decreeing the suit for declaration and consequential relief of injunction and in dismissing the suit for injunction is perfect, legal and justified and based upon the appreciation of oral and documentary evidence and accordingly,

no ground is made out for interference, much less, no substantial question of law arises for determination.

Resultantly, the appeals are dismissed.

02.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No