

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

RSA No.4502 of 2013 (O&M)

Date of decision : 19.05.2016

Gurmail Singh

...Appellant

Versus

Kaka Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Narinder Sharma, Advocate for the appellant.

Mr. Tarun Veer Vashist, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.6578-C of 2016

Prayer in the application is for placing on record copy of resolution Ex.P1, copy of Khasra Girdawari Ex.P3, copy of jamabandi Ex.P2 and copy of bye-laws of society.

Same are taken on record, subject to all just exceptions.

Application is allowed.

Main Case

Present appeal is at the instance of the appellant-defendant against the judgment and decree rendered by the lower Appellate Court, whereby suit for permanent injunction has been decreed on the basis of the statement of the

oral testimony of the witnesses as defendant has failed to cross-examine the witnesses.

Mr. Narinder Sharma, learned counsel appearing on behalf of appellant-defendant submits that the trial Court had relied upon the revenue record and in para No.12 of the judgment found that jamabandi and khasra girdwari shows that possession of with the members of the society. No specific mention of the plaintiff was there to infer that they are in exclusive possession over the suit property and thus urges this Court for formulation of following substantial questions of law:-

1. Whether in the absence of the documentary evidence, the respondent-plaintiff can succeed in seeking restraint order against the defendant from forcible interference and dispossession?
2. Whether the judgment and decree of the lower Appellate Court is sustainable?

Mr. Tarun Veer Vashist, learned counsel appearing on behalf of respondent-plaintiff submits that once the aforementioned witnesses categorically stated about the possession of the plaintiff and in the absence of the cross-examination, his statement made in the examination-in-chief is to be believed. Resolution shows the property to be in the name of society and rightly so, the lower Appellate Court has decreed the suit and thus urges this Court for affirming of the findings.

I have heard learned counsel for the parties and appraised the paper book and of the view that once the plaintiff admitted the factum of resolution showing the possession of the society itself is a sufficient ground for dismissal of the suit seeking restraint order, whereas on the contrary, jamabandi for the year 2004-05, khasra girdawri also proved that possession

lies with the members of the society.

In my view, the plaintiff failed to prove the documentary evidence regarding possession of the society. Statement of the oral witnesses is always be in favour of the plaintiff as they were the witnesses produced by invoking the provision of Order 16 Rule 1-A of the Code of Civil Procedure.

In my view, the lower Appellate Court has not appreciated the documentary evidence whereas oral evidence is availed on the same, which is not based on the appreciation of the law and facts.

For the foregoing reasons, judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored.

Suit is dismissed.

Substantial questions of law as noticed above are answered in favour of the appellant-defendant and against the respondents-plaintiffs.

Appeal stands allowed.

19.05.2016

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**(AMIT RAWAL)
JUDGE**