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

**RSA-725-2013 (O&M)
Date of decision : 31.03.2016**

Sarwan Singh and another

...Appellants

Versus

Gurdial Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarabjeet Khaira, Advocate
for the appellants.

Ms. Ravinder Kaur Manaise, Advocate
for the respondent.

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)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the suit for permanent injunction restraining the appellant-defendant from interfering into Khasra no.5/23 measuring 1 kanal 16 marlas has been decreed.

Mr. Sarabjeet Khair, learned counsel appearing on behalf of the appellant-defendant submits that the respondent-plaintiff has failed to prove the possession. The jamabandi shows that the possession of the father of the appellant-defendant. The demarcation report was not accepted by the appellant-defendant and he did not append his signatures. One line in the

cross-examination cannot be read to form an opinion that the appellant-defendant is not in possession. On the contrary, the respondent-plaintiff has miserably failed to discharge the onus viz-a-viz the possession. All the witnesses have deposed that for the last 7-8 years, the land is lying vacant. The lower Appellate Court has committed illegality and perversity and thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Ms. Ravinder Kaur Manaise, learned counsel appearing on behalf of the respondent-plaintiff submits that as per the admission of the appellant-defendant, it has surfaced that the respondent-plaintiff is in possession of 1 kanal 16 marlas of khasra bearing No.5/23. Rest of the area, he is in possession, as the entire killa is measuring 5 kanals 14 marlas, therefore, obviously, his father's name would be reflected in the jamabandi. The demarcation report has gone un-impeached, much less, un-rebutted and shows the possession of the respondent-plaintiff. The question of title is not disputed, but only is with regard to possession. It is a settled that a person, who is in long and settled possession, is entitled to seek the injunction and cannot be dispossessed except in due course of law and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the aforementioned appeal for the reason that the lower Appellate Court being the last court of fact and law, after examining the oral and documentary evidence, formed an opinion that Sarwan Singh in the cross-examination admitted that except suit land remaining part of kila No.5/23 is in his possession. The dispute is in respect of the aforementioned kila is 5 kanals 14 marals, whereas the respondent-plaintiff

has sought injunction viz-a-viz 1 kanal 16 marlas, thus, there is no dispute to the identity of the property, much less, possession of the same. Jamabandi Ex.P3 shows that name of the father as Teja Singh. DW2 Paramjeet Singh also admitted that Teja Singh was the father of the respondent-plaintiff and there was no other person except Teja Singh.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by the lower Appellate Court which is based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal is dismissed.

31.03.2016
yogesh

(AMIT RAWAL)
JUDGE