

RSA No. 2539 of 2015 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No. 2539 of 2015 (O&M)  
Date of Decision : 23.02.2016

Gurpartap Singh

...Appellant

Versus

Ranjeet Singh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL**

- 1) *Whether Reporters of the 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. Parminder Singh, Advocate for the appellant.

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**Paramjeet Singh Dhaliwal, J.(Oral)**

This regular second appeal of the plaintiff is directed against the judgment and decree dated 31.10.2011 passed by learned Additional Civil Judge (Senior Division), Assandh, whereby suit for declaration with consequential relief of permanent injunction has been dismissed and against the judgment and decree dated 04.02.2015 passed by learned Addl. District Judge, Karnal whereby appeal filed by the plaintiff has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the fact relevant for disposal of this second appeal are to the effect that the plaintiff filed suit for declaration with consequential relief of permanent injunction with the averments that he is owner of 13/9241 share and has built a house on his land and has built one room, boundary wall and foundation of other house with five feet high wall. He has been living in the said house along with his family. The defendants by taking advantage of the wrong revenue entries in the name of their predecessor-in-interest, raised a claim over the land of the plaintiff, however, they are not in possession of even inch of the land in question. Hence, suit was filed.

Upon notice, the defendants resisted the suit and filed written statement taking various preliminary objections. It was submitted that they were owner in possession of land measuring 12 kanal 02 marla situated in kila No. 1/1(5-12), killa No. 10(6-10). It was further submitted that the possession of the defendants is peaceful and without any interruption for the last about 40 years and their entitlement over the piece of land is on the basis of civil court decree. Other averments in plaint were denied and dismissal of suit was prayed for.

On the basis of pleadings of parties, the Court of first instance framed following issues:

- “1. Whether the plaintiff is entitled for decree of declaration as prayed for? OPP.*
- 2. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP*
- 3. Whether the suit of the plaintiff is barred by principle of res-judicata in view of the judgment in civil suit Ranjit Singh etc. Vs. Krishan Kumar etc.? OPD*
- 4. Whether plaintiff has no cause of action and locus-standi to file the present suit? OPD.*
- 5. Whether suit of the plaintiff is not maintainable in the present form? OPD.*
- 6. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of parties? OPD.*
- 7. Whether the plaintiff has not come to the Court with clean hands, if so to what effect? OPD.*
- 8. Relief”*

After appreciating the evidence, the Court of first instance dismissed the suit vide judgment and decree dated 31.10.2011. Feeling aggrieved, the plaintiff preferred an appeal before learned Additional District Judge, Karnal which has been dismissed vide impugned order dated 04.02.2015. Hence, this regular second appeal.

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant has referred to following substantial questions of law formulated in the grounds of appeal for consideration by this Court:

- (i) Whether finding of both the courts below in*

*perversity of the oral evidence where the exclusive possession of the plaintiff has been admitted, is ever sustainable in the eyes of law.*

*(ii) Whether the plaintiff being in exclusive possession of the property is entitled to claim right and title against the co-sharer in the eyes of law and the protection sought for of the said portion is ever legally permissible in the eyes of law?*

*(iii) Whether by virtue of Section 45 of the land revenue act suit to made challenge in the wrong entries of the record of right is ever sustainable in the eyes of law?*

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant contends that both the Courts below have not properly appreciated the evidence and there is misreading of documentary evidence by the courts below. The counsel has shown the documentary evidence i.e. Ex. D1 and Ex. D2, jamabandies for the year 1968-1969, Ex. D3 jamabandi for the year 1997-1998, Ex. D4 and Ex. D5, jamabandies for the year 2002-2003, Ex. D6, jamabandi for the year 2007-2008, khasra Girdawari from 1978-2011 and judgment and decree dated 17.08.2007, Ex. D9.

I have considered the contentions of learned counsel for the appellant.

From the perusal of these documents, it reveals that the name of Gurpartap son of Richpal Singh is mentioned, not

son of Jeet Singh. There is categorical finding that the appellant/plaintiff is not the son of Richpal Singh as no evidence has been brought by the Courts below. The Courts below have recorded the findings that Fauja Singh father of the defendants was in exclusive possession of the disputed khasra number. Thereafter defendants are in possession as per revenue record. The finding with regard to possession is a finding of fact. Both Courts below have recorded concurrent findings of fact.

Learned counsel for the appellant has failed to show that findings recorded before the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the documentary evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

**February 23, 2016.**  
*kanchan*

**(PARAMJEET SINGH DHALIWAL)**  
**JUDGE**