

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

R.S.A. No.2811 of 2015 (O&M)

Date of decision: 18.01.2016

Sumer Singh

...Appellant

Versus

Lal Singh and ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Parmod Parmar, Advocate for the appellant.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 09.02.2015, passed by the learned District Judge, Jhajjar, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 12.10.2012, passed by the learned Civil Judge, Sr. Divn., Jhajjar, (for short, the 'trial Court'), has been dismissed.

The appellant-plaintiff filed a suit for declaration and permanent injunction declaring himself as owner in possession of the house mark ABCDEF and the land adjoining to his house mark ABCDEFGHJ as part of his house against the respondents-defendants and the same was dismissed by the learned trial Court

vide judgment and decree dated 12.10.2012.

Feeling aggrieved, the appellant-plaintiff filed an appeal against the aforesaid judgment, however, the learned First Appellate Court affirmed the findings recorded by the learned Trial Court.

Hence, this appeal at the behest of the plaintiff/appellant.

The learned counsel for the appellant contends that the learned Courts below have erred in holding that the appellant failed to prove his ownership over the disputed land that was being used by him since the time of forefathers. Since the property in dispute is ancestral and located within the Abadi, there can be no documentary proof of the ownership except the ocular evidence produced by him. Even the respondents themselves admitted the ownership of house of the appellant. Further, it is submitted that no oral or documentary evidence was led by the respondents to disprove that the alleged portion of the disputed land was being used as a street.

I have heard the learned counsel and carefully gone through the entire record on file.

The learned Courts below have rightly passed the aforesaid judgments and decrees as apart from producing the site plan, the appellant did not lead any cogent evidence to establish that the disputed portion is part of his house. The report of the local Commissioner also suggests the factual position of the disputed land that the same is being used as Gali by the villagers.

In **Kashmir Singh Vs. Harnam Singh and another**, 2008 (2) RCR (Civil) 688, it has been held that the general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

On consideration, this Court finds that the contentions have no merit as these only relate to the appreciation of evidence. No evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

18.01.2016

ashok

(JITENDRA CHAUHAN)
JUDGE