

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3124 of 2015(O&M)

Date of Decision: 27.01.2016

Rishi Pal

... Appellant(s)

Versus

Kishan and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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. Johan Kumar, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of both the Courts below, whereby suit for permanent injunction, filed by the plaintiff, was dismissed by the Court of first instance and appeal, filed by present appellant, was dismissed by the First Appellate Court.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance. Relevant facts for the purpose of decision of the present appeal that appellant Rishi Pal had filed suit for permanent injunction on the ground that he is owner in possession of residential house marked ABCDEF as shown in the site plan attached with the plaint. The property was ancestral property of

the plaintiff. Plaintiff used to make payment of "chullah tax" and electricity consumption bill and the defendants were having no right, title or interest in the suit property. But defendants, being head strong persons, bent upon interfering in possession of the property over his house and illegally encroached upon six feet wide area, shown with letters AFEL in the site plan, which is a *rasta*. Requests made by plaintiff were of no use. As such necessity of the suit.

Defendants contested the suit taking a plea that suit is not maintainable and plaintiff estopped from filing the suit because of his own acts & conduct. On merits, defendants took the plea that plaintiff had nothing to do with property marked AFEL, which was in fact owned and possessed by defendant No.1. As per defendants, plaintiff was permanent resident of some other village and never resides in village Sehrala, where the disputed property is situated. Earlier, one Ganga Dan had filed civil suit against the present defendants and some other persons in respect of the suit property and defendant No.1 was declared owner in possession thereof. Even the appeal filed by Ganga Dan was also dismissed.

On these facts, Court of first instance settled the issues and parties were put to trial. The Court of first instance, after recording of evidence and appraisal of oral as well as documentary evidence, returned the findings that plaintiff failed to prove that he is in possession of the suit property and as such not entitled to any injunction and suit was dismissed. Appeal filed by plaintiff was dismissed by First Appellate Court and as such, present appeal before

this Court.

Learned counsel for the appellant submitted that plaintiff/appellant has been able to prove his possession over the suit property before the Court below. But both the Courts below have misread the evidence, which resulted into erroneous findings and same are liable to be set aside. Learned counsel for the appellant further submitted that both the Courts below observed that as the suit property was situated within abadi, there could not be direct evidence of the ownership of the property. Still, plaintiff produced sufficient evidence before the Court below which includes production and proof of site plan Ex.P1, copy of ration card Ex.P2 and copies of identity cards issued to him and his wife by the Election Commission of India Ex.P3 & Ex.P4, receipts of "chullah tax" Ex.P5/1 to Ex.P5/6 from the years 1992-93 to 2003 in the name of plaintiff and electricity meter and electricity bills Ex.PW.6/1 to Ex.PW.6/6. This documentary evidence along with oral evidence led by the plaintiff before the Court below proved the version of plaintiff that he is owner in possession of the suit property i.e. house marked ABCDEF and *rasta* marked AFEL. But the Court below returned the findings which are contrary to the record and the said findings be reversed.

Having considered the submissions made by learned counsel for the appellant and perusal of the record of the case, this Court is of the considered view that both the Courts below have already appreciated the entire oral as well as documentary evidence and recorded concurrent findings of facts that plaintiff has not been able to

prove his case. There is absolutely no substantial question of law involved in the case. This Court say so because law on the point is settled that the plaintiff is required to prove his own case by leading his own evidence but not to fall back upon the weakness in the case of defendants. However, in this case, plaintiff has not been able to prove his case. Rather defendants have been able to prove that plaintiff is not the owner of the suit property and as such not entitled to any injunction. Both the Courts below have rightly recorded the finding that plaintiff/appellant tried to connect the "chullah tax" receipts and receipts regarding payment of electricity consumption charges to the suit property. But plaintiff failed to establish the same. That way, plaintiff failed to establish his possession over the suit property. Although the onus was primarily upon the plaintiff. As such, concurrent findings of facts of both the Courts below and the judgment & decree passed on the same do not call for any interference by this Court.

Present appeal is dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

January 27, 2016

"DK"