

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

**R.S.A No. 3258 of 2015(O&M)
Date of decision :08.01.2016**

Sukha Singh

..... Appellant

Versus

Yashpal Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.S.C.Chabra, Advocate
for the appellant.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 18.02.2015 passed by the learned District Judge, Ferozepur, vide which the appeal preferred against the judgment and decree dated 26.02.2013 passed by the learned Civil Judge (Jr. Division), Ferozepur, has been dismissed.

2. The appellant-plaintiff had instituted the suit for mandatory injunction for issuance of directions to the defendants to handover the physical and vacant possession of the suit property to the plaintiff on the

basis of the previous entries in the Cantonment Board record depicting his possession thereupon. As per the case of the appellant-plaintiff, he was the occupier of the suit land for a period of about 20 years upto May 2006. He constructed a Gurudwara Sahib over the suit land by incurring expenses from his own pocket and was performing the duties of Pathi. He was regularly serving at Gurudwara Sahib. He raised the construction in the area measuring 33 feet x 13 feet i.e. 432 Sq. Feet and was also residing therein in two rooms and the courtyard. He had filed an appeal challenging the order of Estate Officer, Cantonment Board, Ferozepur, under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 before the learned District Judge, Ferozepur, exercising the powers of Appellate Authority. The said appeal was accepted vide judgment dated 09.02.2004. The name of the plaintiff-appellant is recorded in the records of the Cantonment Board. He is also having the ration card and voter identity card, which shows the address of the plaintiff as the property in dispute. In the revenue record also the possession of the plaintiff has been depicted. He suffered an electric shock in the year 2004 and remained admitted in the hospital. During the absence of the plaintiff, the defendants forcibly occupied the suit property without any legal right in connivance with the officials of the Cantonment Board. Hence this suit.

3. The suit filed by the appellant was dismissed as withdrawn against defendants no.1 to 3. The suit was contested by defendants no. 4 and 5, but subsequently, they were also proceeded against ex-parte.

4. Learned Trial Court returned the findings that the plaintiff

has not been able to prove his possession over the suit land. So, the suit of the appellant-plaintiff was dismissed vide impugned judgment and decree dated 26.03.2013.

5. The first appeal preferred by the plaintiff was also dismissed by the learned First Appellate Court vide impugned judgment and decree dated 18.02.2015. Hence this Regular Second Appeal.

6. I have heard Mr. S.C.Chabra, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

7. Learned counsel for the appellant contended that it is established that the plaintiff was in possession of the suit land that is why the eviction order was passed by the Estate Officer. The said eviction order was set aside by the learned District Judge vide judgment dated 09.02.2004 Ex.P-2. He contended that the learned Courts below have not taken into consideration the judgment Ex.P-2 passed by the learned District Judge. Learned District Judge has remanded the case to the Estate Officer for fresh adjudication with the observations that “something more was required to be established regarding the land in dispute being owned by the Cantonment Board or the Union of India.” Thus, he contended that the plaintiff is proved to be in possession of the suit property which has been illegally occupied by the defendants taking the benefit of his absence. So, he is entitled for the possession by way of mandatory injunction.

8. I have duly considered the aforesaid contentions.

9. This is the Regular Second Appeal against the concurrent findings of facts recorded by both the learned Courts below. The law is

well settled that it is not permissible for the High Court to interfere with the concurrent findings of the fact recorded by the learned Courts below except in two situations. The first situation is that when material or relevant evidence is not considered which if considered would have led to an opposite conclusion. The second situation is that where a finding has been arrived at by the learned Courts below by placing reliance on inadmissible evidence and the judgments rendered are perverse. There is no doubt that under Section 100 of the Code of Civil Procedure, 1908, the powers of the Court while exercising the jurisdiction in the second appeal is limited. The Court will not disturb the concurrent finding of fact as general principle of law, the High Court should not undertake the task of re-appreciating the evidence and record finding different from then those recorded by the Courts below merely because another view is possible. In the second appeal the High Court can only interfere if the substantial question of law is involved. In the grounds of appeal, the appellant has raised the following substantial questions of law:-

- a) Whether the learned Courts below have committed a serious illegality in not returning its findings on earlier judgment dated 09.02.2004 (Ex.P-2) in which the learned District Judge observed that the land in dispute though a part of survey no. 308/16P but the General Land Register produced before court pertains to survey no. 276?
- b) Whether impugned judgment of trial Court without consideration by the production of any issue and without issue-wise decision on the same is an error of jurisdiction resulting in manifest injustice with the appellant and first Appellate Court has committed an illegality in over looking the same?
- c) Whether the learned Courts below have adopted erroneous procedure vitiating the trial contrary to the provisions of Order XV Rule 1 of the Code of Civil Procedure which provides that if the parties

are not at issue the suit filed by the plaintiff may/shall be decreed?

d) Whether the impugned judgments are perverse being the result of misreading and mis-appreciation of evidence by drawing inferences contrary to facts and law?

It is settled principle of law that the plaintiff has to establish his case by leading the cogent and convincing evidence and he cannot be granted the decree merely on the basis of the weakness in the case of the defendants. In the instant case, plaintiff has himself stepped into the witness box and filed his affidavit Ex.PW1/A along with document Ex.P-1. He has also produced the copy of the judgment Ex.P-2. He has not produced the record of the Cantonment Board to show that he has been in possession of the suit land for 20 years. The copy of the judgment Ex.P-2 referred by learned counsel for the appellant also cannot advance the case of the plaintiff. In that judgment, the learned District Judge observed that “it would have been better for the Cantonment Board to establish to the satisfaction of the Estate Officer that the land which is alleged to have been encroached upon by the appellant bears survey no. 308/16(P) which is also the same as survey no. 276.” It was further observed by the learned District Judge that “there was no sufficient material produced on record by both the parties to enable the Estate Officer to arrive at a just conclusion. Something more is required to be established regarding the land in dispute being owned by the Cantonment Board or the Union of India.” Thus, the order passed by the Estate Officer was set aside and the case was remanded for fresh adjudication for want of sufficient evidence. So, that was not a judgment on merits.

10. Learned First Appellate Court has categorically mentioned

that the plaintiff has neither produced the record of Cantonment Board nor the ration card nor the voter card, nor the revenue record in support of his plea. He has simply brought on record the site plan Ex.P-1 and the copy of the judgment Ex.P-2, which has already been discussed. The site plan will not establish the possession or the title of the plaintiff. The plaintiff has also not placed on record any material to show as to what happened after the remand of the case to the Estate Officer by the learned District Judge. As already mentioned vide judgment Ex.P-2, the matter was only remanded to the Estate Officer for fresh adjudication, thus, the rights of the parties were not finally adjudicated in that judgment. Consequently, due to lack of the cogent, convincing and reliable evidence, the appellant-plaintiff has not been able to establish his possession over the suit property and his illegal dispossession by the defendants. So, I do not find any illegality or perversity in the concurrent findings of fact arrived at by the learned Courts below.

11. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

12. Consequently, the present appeal having no merits is hereby dismissed in *limine* with no orders as to costs.

January 08, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**