

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

RSA-5040 of 2015 (O&M)

Date of decision: 14.01.2016

Balraj

...Appellant

Versus

Jaipal and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Shakti Singh, Advocate for
Mr. N.S. Panwar, Advocate for the appellant.

Jitendra Chauhan, J.

CM-12004-C-2015

Keeping in view the averments made in the application, the same is allowed. The delay of 06 days in filing the present appeal is hereby condoned.

RSA-5040-2015

By way of the present appeal, the plaintiff/appellant has assailed the judgment dated 19.05.2015, passed by Addl. District Judge, Sonapat, upholding the judgment dated 06.09.2012, passed by Addl. Civil Judge (Sr. Divn.), Sonapat,

whereby the suit for permanent injunction filed by the plaintiff/appellant was dismissed.

It is contended that both the Courts below have gravely erred in ignoring the material facts on record. The respondent No.1 had duly admitted in his written statement, the possession of the appellant over the property in dispute, however, both the Courts below have not considered the fact of possession and have wrongly given weightage to the ownership. The appellant had duly proved the possession over the disputed property vide affidavit and receipt.

Heard.

The appellant/plaintiff had placed an affidavit dated 05.05.2005 on record before the trial Court given by defendant No.2, who had sold malba/material to the plaintiff, however, the same does not show that the appellant was the owner in possession of the disputed property. The defendant Jaipal had stated that he was unaware of the number of the disputed house and its measurements. He had further stated that the plot was in possession of DW-2, Ashok, whereas DW-2, Ashok in his deposition has stated that he was not aware of the number of the plot. He has given the area of the plot as 110 sq. yards, whereas

the plaintiff has mentioned the area to be 34 sq. yards. Therefore, the plaintiff has failed to state the exact area of the suit land. There is no document of title in favour of the plaintiff. In fact, PW-1 Balraj has stated that it is a custodian land; therefore, none of the party is owner of the land. The execution filed by one Laxmi was also dismissed as withdrawn. On consideration, this Court finds that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. In **Kashmir Singh** Vs. **Harnam Singh and another**, 2008(2) RCR (Civil) 688, it has been held as under:-

“17. 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. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

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.

Dismissed.

14.01.2016

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(JITENDRA CHAUHAN)
JUDGE