

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

RSA No.2670 of 2014 (O&M)

Date of decision : 16.08.2016

Daljit Singh

...Appellant

Versus

Mohinder Kaur and others

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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. Amarjit Markan, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of fact whereby suit seeking possession of the plots bearing Nos.388 and 389 bearing khasra noss 38/2/3, 9/1, 9/2, 10, 11, 12/1, 12/2, 19/1, 19/2, 20, 21, 47/1, 2 and 9 on the premise that aforementioned plots were under possession of Avtar Singh son of Diwan Singh and Diwan Singh son of Tara Singh having an area of 200 square yards each has been dismissed. The aforementioned plots were agreed to be sold vide agreement to sell dated 08.05.2001 and 20.08.2001 and in lieu thereof plaintiff-appellant had been put into possession and the alleged dispossession is of 05.09.2001.

Mr. Amarjit Markan, learned counsel appearing on behalf of

appellant submits that basically suit was to be treated as under Section 6 of the Specific Relief Act as appellant has not setup a plea of title but the Courts below have embarked on such path which was not a case setup in the plaint. In order to establish the possession, the electricity connection and the material with regard to the raising of construction had been proved on record but yet Courts below failed to render any findings in favour of the appellant. No doubt the Vendors have not appeared in the witness-box but the mother of the appellant had put in appearance and submitted that Daljit Singh has been put into possession. All these factors have gone unnoticed and thus there is illegality and perversity, much less, misreading and misconstruing of the oral and documentary evidence.

I have heard learned counsel for the appellant and appraised the paper book.

Accepting arguments for a moment that suit had to be treated under Section 6 of Specific Relief Act, cardinal principle for the person who has alleged dispossession is to prove the possession and the onus for proving the agreement to sell has not been discharged. They have been just tendered into the evidence. Even the alleged Vendor namely Avtar Singh and Diwan Singh have not appeared in the witness-box. Self-serving statement of Bakhshish Kaur who is none else but the mother of the appellant in my view has not been able to prove the possession being interested witness. Electricity connection, much less, construction material which was allegedly purchased for constructing house does not show any possession. Nothing prevented the appellant-plaintiff to seek aid of Local Commissioner to establish their possession or through any other mode they chose to avail.

Having failed to do so, I am of the view that both the Courts below rightly declined the relief of possession, much less, appellate Court.

I am in agreement with the aforementioned judgment and decree of the Courts below.

I do not find any illegality and perversity, much less, no substantial questions of law arises for determination.

Dismissed.

16.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- Yes/No