

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. No. 4242 of 2014 (O&M)
Date of Decision: January 14, 2016**

Suresh Chand and others

... Appellants

Versus

Dharampal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. M.S. Randhawa, Advocate,
for the appellants.

Paramjeet Singh Dhaliwal, J.

CM-9846-C-2014

Having heard learned counsel for the appellants and for the reasons recorded in the civil misc. application, same is allowed. Delay of 2 days in filing the appeal is condoned.

RSA No. 4242 of 2014

This regular second appeal has been preferred by the appellants against the judgment and decree dated 20.07.2011 passed by learned Additional Civil Judge (Senior Division), Narnaul whereby suit filed by the respondent no.1/plaintiff for permanent injunction has been decreed, as well as, against the judgment and decree dated 18.02.2014

passed by learned Addl. District Judge, Narnaul, whereby appeal preferred by the appellants/defendants has been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for permanent injunction against the defendants on the ground that he is owner in possession of a plot shown in the site plan annexed with the plaint, having boundary walls on three sides. The suit property was earlier being used by the ancestors of the plaintiff as a Nohra and they had raised shed, were tethering cattles, had put stones, manure and fire woods, without any interference from any corner. The defendants were threatening to interfere in their actual physical possession over the suit property. The defendants were requested not to dismantle and to dispossess the plaintiffs from the suit property, but they refused to accede to the request. Hence, suit was filed.

Upon notice, defendants appeared and filed their written statement as well as counter claim taking preliminary objections regarding maintainability; locus standi; concealment of true and material facts, limitation, etc. On merits, it is averred that the property in dispute is neither owned nor possessed by the plaintiff. Earlier it was owned and possessed by Boda son of Jeeta, it having been allotted to him. The same was inherited by the defendants. The defendants have raised the boundary wall and are using the same for their domestic purposes.

On the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. *Whether plaintiff is owner in possession of suit property marked by letters ABCD shown in site plan? OPP*
2. *Whether plaintiff is entitled to decree of permanent injunction as prayed for? OPP*
3. *Whether present suit is not maintainable? OPD*
4. *Whether plaintiff has no locus standi to file the present suit? OPD*
5. *Whether plaintiff has not come in the court with clean hands and concealed the true and material facts from the court? OPD*
6. *Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
7. *Whether defendants no. 1 to 11 are owner in possession of the property in question being Ahata no. 31 ghar no. 63 and Ghar no. 41 since 1932 BK as claimed in counter claim? OPD*
8. *Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, decreed the suit vide judgment and decree dated 20.07.2011 and dismissed the counter claim filed by the defendants. Against that, defendants preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 18.02.2014. Hence, this second appeal.

I have heard learned counsel for the appellants.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 12 of grounds of appeal, arise for consideration in this second appeal:-

- “I) Whether the statement of PW1 is sufficient to prove the possession of the respondent over the suit property?*
- II) Whether without any documents on record or merely statements given by PW3 are sufficient to prove the possession of the respondent over the property in question?*

Learned counsel for the appellants contended that the findings recorded by both the Courts below are against law, without appreciation of facts and not sustainable in the eyes of law. Therefore, the impugned judgments and decrees are liable to be set aside.

I have considered the contentions raised by learned counsel for the appellants and perused the record.

There is categorical finding recorded by the Court of first instance that admittedly the suit property lies in abadi deh. Perusal of the documents on record shows that there is nothing on record to show that the suit property is the same property which was allegedly allotted to Bodha. It is admitted fact by the defendants that they never got demarcated their plot for the purpose of ascertaining that the suit property is part and parcel of their alleged Bara bearing Ghar No. 41, Ahata No.31. PW1 Kaluram, mason and PW2 – Kishori Lal proved the fact that the boundry wall around the suit property was raised by them at the instance of plaintiff and their wages were paid by him. It has been categorically held by the Courts below that plaintiff is in possession of the suit property. The defendants have failed to prove by leading cogent evidence on record that the boundary wall on the suit property was got constructed by them about 10-15 years ago.

Concurrent findings of fact have been recorded by both the

Courts below. Learned counsel for the appellants could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, said findings of fact do not warrant interference in second appeal. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine

January 14, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge