

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

RSA-5718 of 2014 (O&M)

Date of decision: 01.02.2016

Bhan Kaur and others

...Appellants

Versus

Malkiat Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. N.S. Chahal, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

The plaintiffs/appellants filed suit for declaration. The trial Court vide judgment and decree dated 30.04.2013, dismissed the suit.

2. Aggrieved against the findings of trial Court, the plaintiffs/appellants filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 02.07.2014.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal at the behest of the plaintiffs/appellants.

4. The brief facts of the case are that Rakha Singh, the father of the parties to the suit, was owner in possession of land measuring 1 kanal 5 marlas being ancestral property. After the death of Rakha Singh, respondents took possession of the suit property forcibly. The appellants made repeated requests and demands to the respondents to admit their claim, but to no effect. Respondents even served legal notices dated 11.07.2008 and 14.07.2008 to admit the claim of the appellants, but in vain.

5. It is contended by learned counsel for the appellants that both the Courts below have gravely erred in not considering the material facts on record. From the record, it is proved that the defendants had forcibly taken possession over the property in dispute after the death of Rakha Singh, the father of plaintiffs and respondents. The plaintiffs have an equal right over the property in dispute since it is ancestral property.

6. I have heard the contentions of learned counsel for the appellants.

7. The dispute is inter se the brothers and sisters. The plaintiffs had laid their claim before the Courts below on the

basis of jamabandi Ex.PW2/B, however, the same belongs to village Sandhwan, whereas the plaintiffs had filed the suit pertaining to the property located in village Araiyanwala Kalan. No other document was brought on record before the Courts below. The measurement of the property in dispute had also not been mentioned before the Courts below which was fatal to the case of the plaintiffs. The plaintiffs had claimed that the property in dispute was an ancestral property, however, neither any document nor any sale deed had been brought on record to prove their claim. Thus, the plaintiffs/appellants had miserably failed to prove their case before the Courts below, therefore, in the given facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties. 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.”

8. 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.

01.02.2016

sumit.k

(JITENDRA CHAUHAN)
JUDGE