

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No. 346/2015**

% **Reserved on: 29th September, 2016**
Pronounced on: 05th October, 2016

SH. LAKHMI CHAND & ORS. Appellants

Through: Mr. D.V.Khatri, Advocate.

versus

SH. KARAN SINGH & ANR. Respondents

Through: Mr. Amit Singh Chadha, Sr. Adv. with
Mr. S.K.Verma, Mr. Sahil Mongia and
Mr. R.K.Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellants, and who are the plaintiffs in the suit. The challenge by this second appeal is to the impugned Judgment of the First Appellate Court dated 4.8.2015 whereby the suit filed by the appellants/plaintiffs has been dismissed, and which suit was decreed by the Trial Court as per its Judgment dated 23.5.2014 and the respondent no.1/defendant no.1 was restrained from dispossessing or interfering in any manner with physical possession of the appellants/plaintiffs of the suit property

bearing Khasra no.3(2-0) and Khasra no. 423 admeasuring 650 sq. yds, situated in Village Saboli, Delhi and which is a vacant land.

2. The facts of the case are that the appellants/plaintiffs claimed that they were the owners of the suit property being about 2650 sq. yds in Khasra no. 3(2-0) and Khasra no. 423 of Village Saboli, Delhi as they had inherited the suit property from their forefathers. Originally the ancestor Sh. Goverdhan is pleaded as per the plaint to be the owner of the suit land. Sh. Goverdhan had five sons including one Sh. Chhajan. Appellants/plaintiffs are as per the plaint the grandsons of the said Sh. Chhajan. Respondent no.1/defendant no.1 is the grandson of another son Sh. Dayala of Sh. Goverdhan. Appellants/plaintiffs pleaded that they were the owners of the suit property because an oral partition had been effected way back (not stated when/which year in the plaint) between the parties and that pursuant to the oral partition appellants/plaintiffs were in possession of the suit property till the date of the filing of the suit. It was pleaded that the possession of the appellants/plaintiffs is recorded in the khasra girdawari (revenue record) of the year 1977-78. It was further pleaded that respondent no.1/defendant no.1 tried to dispossess the appellants/plaintiffs from the suit property and hence the subject suit was filed on 16.12.2009 because the appellants/plaintiffs were the owners and in possession of the suit property.

3. Respondent no.1/defendant no.1 has contested the suit and pleaded that though there was a common ancestor Sh. Goverdhan, however, the suit property thereafter came to be exclusively owned by the grandfather of the respondent no.1/defendant no.1 Sh. Dayala. From Sh. Dayala the suit property was shown as in the individual ownership of the mother of the respondent no.1/defendant no.1 Smt. Fatto and in whose exclusive name the suit property is shown in the revenue record. It was therefore contended by the respondent no.1/defendant no.1 that he is the exclusive owner of the suit property and of which he was in possession and not the appellants/plaintiffs.

4. After pleadings were complete trial court on 9.12.2010 framed the following issues:-

- “1. Whether plaintiff is in physical possession of the suit property? OPP
2. Whether this suit is bad under Section 185 of DLR Act? OPD
3. Whether this suit is bad for misjoinder of necessary parties? OPD
4. Whether this suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
5. Whether plaintiff is entitled for decree for permanent injunction as claimed? OPP
6. Relief.”

5. The relevant issue which is called upon for decision as per the arguments urged on behalf of the parties before this Court is the issue no.5. Issue no.5 is the issue with respect to entitlement of the appellants/plaintiffs for injunction with respect to the suit property and which head of injunction would

have within its hold two ingredients, one as to whether the appellants/plaintiffs are the owners of the suit property and second as to whether the appellants/plaintiffs are in possession of the suit property as on the date of the suit. It is these two ingredients and aspects which are called for decision in the present Regular Second Appeal.

6. Before turning to these two aspects to be decided, the law with respect to grant of injunction, pleading possession and ownership of an immovable property, is required to be noted and which is exhaustively stated in the judgment of the Supreme Court in the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others (2008) 4 SCC 594*, and the relevant paras of which judgment are paras 13 to 21, and the same read as under:-

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to

establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

15. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the

court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.

17. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In *Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple v. Rajanga Asari* Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question necessitating denial of plaintiff's title by the defendant; and as the earlier suit was concerned only with a possessory right and not title, the subsequent suit was not barred. There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred.

18. On the other hand, in *Sulochana Amma v. Narayanan Nair* this Court observed that a finding as to title given in an earlier injunction suit, can operate as res judicata in a subsequent suit for declaration of title. This was on the premises **that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration**; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as res judicata. This Court observed: (SCC p.20, para 9)

“9. Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata.”

This was reiterated in *Annaimuthu Thevar v. Alagammal*.

19. This Court in *Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer* (at SCC pp.362-63, para 24) noticed the apparent conflict in the views expressed in *Vanagiri* and *Sulochana Amma* and clarified that the two decisions did not express different views, but dealt with two different situations, as explained in *Corpus Juris Secundum* (Vol.50, para 735, p.229):

“Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title.”

20. In *Vanagiri*, the finding on possession did not rest on a finding on title and there was no issue regarding title. The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in *Sulochana Amma* that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is, where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when a issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to res judicata, but a question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to title.

21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, **or**

implied as noticed in *Annaimuthu Thevar*). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

(emphasis is mine)

7. A reading of the aforesaid paragraphs of the judgments of the Supreme Court in *Anathula Sudhakar's* case (*supra*) shows that a person who is in possession can protect his possession against the world at large except the true owner. As against the true owner the equitable remedy of injunction is not to be granted in favour of a plaintiff who is not in lawful possession. In a suit where a plaintiff only claims injunction, but where title of a plaintiff is seriously disputed and which requires examination of complex questions of law and facts, then a simplicitor suit for injunction will not lie and it would be necessary for the plaintiff to seek a declaratory relief with respect to the ownership of the suit land before seeking injunction with respect thereto. The Supreme Court has also however held that if a suit is simplicitor for injunction but the parties

proceed on the basis of title itself being in issue and accordingly the case is contested by leading evidence by the respective parties, then in such a case the simplicitor suit for injunction can be said to include the aspect of title which has to be decided. Thus, in any suit for injunction filed with respect to an immovable property where title of the suit property is disputed, courts have to examine the aspect of title which is directly in issue and it is only if the plaintiff is found to have title to the suit property, only then the plaintiff will be entitled to injunction, of course provided that the plaintiff is also found to be in actual physical possession of the suit property at the time of filing of the suit.

8. So far as the aspect of title is concerned in the present case, counsel for the appellants/plaintiffs has conceded that the appellants/plaintiffs have not proved their title to the suit property, and therefore, the appellants/plaintiffs are seeking relief only on the basis of their settled and lawful possession of the suit property. I may note that even if the title was in issue as the issue no.5 covers it and parties have led evidence on the issue of title, it is seen that appellants/plaintiffs have led no documentary evidence whatsoever to show their ownership/title of the suit land. Obviously, oral testimony cannot confer ownership/title of the suit land on the appellants/plaintiffs and appellants/plaintiffs had necessarily to prove, ordinarily by unimpeachable documentary evidence, that the suit property fell to the share of their

grandfather Sh. Chhajan on there being an oral partition and from which Sh. Chhajan the appellants/plaintiffs have inherited the suit property being his grandsons. The only document which was filed by the appellants/plaintiffs was a revenue record of the year 1977-78, and which document was never proved because this document was only a photocopy and not a certified copy of the revenue record of 1977-78. This document has not been exhibited but is only marked as Mark A even in the affidavit by way of evidence filed on behalf of the appellants/plaintiffs of their witness PW-1/Sh. Raghbar Singh/plaintiff no.2. Even for the sake of arguments, if we take the revenue record of 1977-78 as proved and exhibited document, it is seen that even in this document, the title of the suit land is admittedly shown to be of Smt. Fatto mother of the respondent no.1/defendant no.1 and there is no ownership shown of the suit property of the appellants/plaintiffs or their predecessors-in-interest/ancestors. Therefore, it is clear that appellants/plaintiffs have miserably failed to prove their title to the suit land. Once appellants/plaintiffs failed to prove their title to the suit land, no relief of injunction can be granted holding that the appellants/plaintiffs are the owners of the suit land, and in fact, in view of the paras of the judgment in *Anathula Sudhakar's* case (*supra*) quoted above, injunction cannot be granted in favour of a person/plaintiff to protect his possession if such person is in wrongful possession, and therefore, injunction cannot be granted to a person in unlawful possession and against a rightful owner, and this is because injunction

is a discretionary relief and cannot be granted to an illegal occupant. Therefore, once appellants/plaintiffs have miserably failed to prove their title to the suit land, firstly they are not entitled to any injunctive relief by declaring that the appellants/plaintiffs are the owners of the suit property and secondly the appellants/plaintiffs cannot also be granted injunction against the respondent no.1/defendant no.1 who not only is the owner of the suit property as discussed below, but also that respondent no.1/defendant no.1 is found to be in possession of the suit land and not the appellants/plaintiffs.

9. So far as the aspect of injunction being granted to the appellants/plaintiffs against the respondent no.1/defendant no.1 from dispossessing the appellants/plaintiffs from the suit property is concerned, it is seen that as per para 15 of the judgment in *Anathula Sudhakar's* case (*supra*), appellants/plaintiffs will have to be in lawful possession of the suit property on the date of the suit before being entitled to grant of injunction against dispossession. Let us therefore examine as to whether the appellants/plaintiffs have proved their possession of the suit property on the date of filing of the suit or in any case in and around the date of filing of the suit.

10. Even with regard to the claim of the appellants/plaintiffs of possession of the suit property in and around the time of filing of the suit, it is seen that the appellants/plaintiffs have miserably failed to prove their such

possession of the suit property. Issue of possession cannot be held in favour of the appellants/plaintiffs by mere oral evidence and it is seen that appellants/plaintiffs had only led oral evidence with respect to possession of the suit property. No documentary evidence whatsoever has been filed by the appellants/plaintiffs to show their possession of the suit property as on 16.12.2009 when the subject suit was filed. Only documentary evidence filed on behalf of the appellants/plaintiffs for possession of the suit property is of much earlier year of 1977-78 and which is the khasra girdawri of the year 1977-78 Mark A as already referred to above, and which document has not been proved, and thus cannot be looked into as it has not been proved, and exhibited. Even if this khasra girdawri of 1977-78 is taken as proved, it will at best show possession of some part of Khasra no. 3, and not of both Khasra nos.3 and 423, with the appellants/plaintiffs in the year 1977-78, whereas the suit is filed in December, 2009 i.e after around 32 years of the revenue record of the year 1977-78 and for this period of 32 years there are no documents whatsoever to show that the appellants/plaintiffs were in possession of the suit land from 1977-78 till December, 2009 when the suit was filed. Thus, the appellants/plaintiffs have miserably failed to show their possession of the suit property in December, 2009 when the suit was filed and in fact even for at least 32 years immediately before the filing of the suit and therefore it cannot be held that the appellants/plaintiffs were in possession of the suit property for the

appellants/plaintiffs to be granted injunction against their dispossession from the suit property. Also, as already held above, even assuming that the appellants/plaintiffs are in possession of the suit property as trespassers, because they have failed to prove their title to the suit property then in such a case, by virtue of para 13.1 of the judgment of *Anathula Sudhakar's* case (*supra*), injunction cannot be granted in favour of any unlawful occupant as against the true owner.

11. I may note in this regard that the revenue record marked 'A' for the year 1977-78 does not show appellants/plaintiffs as being in possession of any land in Khasra no. 423, and it is noted that the suit land is with respect to land of about 2000 sq. yds in Khasra no. 3 and 650 sq. yds in Khasra no. 423, and therefore, in fact with respect to Khasra no. 423 there is not a single document filed by the appellants/plaintiffs to show that either they or their predecessors-in-interest were in possession of the suit property, much less in and around the date of filing of the suit on 16.12.2009.

12. There is yet another aspect with respect to revenue record Mark A of the year 1977-78, and which is that Khasra no. 3 is shown to be having an area of about 3900 sq. yds i.e 3 bighas and 18 biswas. Appellants/plaintiffs only claim to be the owners and in possession of about 2000 sq. yds of Khasra no.3. Appellants/plaintiffs however have failed to explain the incongruity

between the revenue record of 1977-78 showing Khasra no.3 of 3 bighas and 18 biswas and the appellants/plaintiffs claim to only 2 bighas out of this Khasra no.3, i.e there is no demarcation as to which area is the 2 bighas area of the total area of 3 bighas and 18 biswas in Khasra no. 3 and which is claimed by the appellants/plaintiffs. Therefore, there is also lack of identification and demarcation with respect to which part of 2000 sq. yards of Khasra no. 3, which has a larger total area of about 3900 sq. yds, that the appellants/plaintiffs are in possession of. Thus, in view of this sketchy and unclear evidence, it cannot be held even on the basis of a revenue record of 1977-78 that appellants/plaintiffs are in physical possession of the suit land of 2000 sq. yards of total area of 3900 sq. yards in Khasra no. 3.

13(i) Not only the appellants/plaintiffs have miserably failed to prove their ownership and possession of the suit land, on the contrary, the respondent no.1/defendant no. 1 has proved the ownership and possession of the suit property because respondent no. 1/defendant no. 1 is shown to be the owner of the suit property in the revenue records from the years 2001 to 2009 and which revenue records have been filed and proved by the respondent no.1/defendant no.1 as Ex. DW1/1. Once the respondent no. 1/defendant no. 1 has proved his title to the suit property because revenue records from the years 2001 to 2009 show respondent no. 1/defendant no. 1 to be the owner of the suit property, such

revenue records though not conferring or finalizing title, do indicate ownership of the respondent no. 1/defendant no. 1 of the suit land and such revenue records once proved unless rebutted, as regards the claim of ownership and inference of ownership of respondent no. 1/defendant no. 1 of the suit land, the same can be held in favour of the respondent no.1/defendant no.1. No doubt revenue record does not confer title or is final with respect to title, however, if for 9 years before filing of the suit consistently and for every year respondent no.1/defendant no. 1 is shown as owner and in possession of the suit land, the onus of proof shifted upon the appellants/plaintiffs to show that they were the owners and in possession of the suit land because, and on which aspect they fail because the suit land is not shown in ownership of the appellants/plaintiffs either in the revenue record or any other documentary evidence/record.

(ii) As already stated in the beginning of this judgment that the suit land is a vacant piece of land and this is because it is so stated in the plaint as also in the two site plans filed by the appellants/plaintiffs, both exhibited as Ex. PW1/1 for Khasra no. 423 for 650 sq. yds and for 2 bighas of the Khasra no. 3. I therefore reject the argument which was urged on behalf of the appellants/plaintiffs before this Court that the suit land was not a vacant land when the suit was filed inasmuch as both in the plaint as also in the site plans filed by the appellants/plaintiffs as Ex. PW1/1, the suit land in both the Khasra

numbers, is shown to be vacant land without any construction. No benefit also can be derived by the appellants/plaintiffs of a deposition/statement in the examination of DW1 Sh. Karan Singh dated 17.8.2013 that there is a house in 800 sq. yds in Khasra no. 3 inasmuch as not only this cross-examination does not state that the house in Khasra no. 3 is owned and possessed by the appellants/plaintiffs but also that as has already been stated above that the total Khasra no. 3 is a large area of about 3900 sq.yds without demarcation of 2000 sq. yds of suit land in Khasra no.3, and further it is not stated in the cross examination of DW1 on 17.8.2013 that the house existed as on the date of the filing of the suit on 16.12.1989. For the self same reasons argument of the appellants/plaintiffs is also rejected with respect to construction existing in Khasra no. 423. I may note that the impugned judgment of the first appellate court notes the clear and categorical admission of the appellants/plaintiffs in the cross-examination of PW1 that there was no construction on the suit property when the suit was filed and that the eight rooms were constructed only during the pendency of the suit. The first appellate court has therefore rightly held that the suit land is to be taken as a vacant land, and once the suit land is vacant, even assuming respondent no.1/defendant no.1 has failed to show his possession, yet, since possession follows title in view of para 16 of the judgment in *Anathula Sudhakar's* case (*supra*), since the respondent no.1/defendant no. 1 has proved his title to the suit land, possession of the suit

land will be of the respondent no.1/defendant no. 1 and not the appellants/plaintiffs. To complete the narration on this aspect of there being no construction on the suit land as on the date of the filing of the suit on 16.12.2009 I note for further clarification that when PW1/Sh. Raghbar Singh/plaintiff no. 2 was cross examined on 14.2.2011, it is categorically admitted by him that 8 rooms on the suit property were constructed after the filing of the suit. In the very next line also of this cross-examination, PW1 has again categorically admitted that at the time of institution of the suit, the suit property was vacant. Therefore, the argument of the counsel for the appellants/plaintiffs that the suit property was constructed upon and was not vacant when the suit was filed, is a totally misconceived argument and is rejected.

14. It is therefore held that the respondent no.1/defendant no. 1 has proved his title to the suit land and consequently also possession of the suit land because the suit land was a vacant and open piece of land when the suit was filed in December, 2009. In any case, the appellants/plaintiffs have completely failed to prove their possession of the suit property in December, 2009 when the suit was filed or in and around that period and therefore since the appellants/plaintiffs were not in possession of the suit property when the suit was filed, no injunction can be granted against the so called threat to dispossess

the appellants/plaintiffs because appellants/plaintiffs are not in physical possession of the suit land for they being granted the relief of injunction claimed against dispossession.

15. In view of the above, it is held that the first appellate court has rightly passed the impugned judgment dismissing the suit of the appellants/plaintiffs by setting aside the Judgment of the Trial Court dated 23.5.2014 which had decreed the suit. This Regular Second Appeal is therefore dismissed inasmuch as no substantial question of law arises.

OCTOBER 05, 2016
ib/godara/AR

VALMIKI J. MEHTA, J