

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

**RSA No.281 of 1999 (O&M)
Date of Order: 07.12.2017**

Kanshi Ram

..Appellant

Versus

Amar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ram Chander, Advocate,
for the appellant.

Mr. Sachin Mittal, Advocate,
for the respondent

ANIL KSHETARPAL, J (Oral)

Defendant no.5-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for permanent injunction as well as mandatory injunction claiming that he is in physical possession of 5 marlas plot and the defendants be restrained from interfering in his possession. Plaintiff has claimed that he is in actual physical possession of the land as tenant and has constructed two rooms over the land.

It is not in dispute that an interim injunction was granted in favour of the plaintiff. During the pendency of the suit, a Local Commissioner was appointed. The Local Commissioner reported that defendant no.5 is raising construction in violation of the injunction order.

Defendant no.5-appellant filed written statement and pleaded that he is in possession of the suit premises since 1957.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff.

Defendant no.5-appellant filed first appeal. Before the first appellate Court, defendant no.5-appellant filed two applications under Order 41 Rule 27 of the Code of Civil Procedure on the ground that he had not been granted sufficient opportunities to lead evidence. In the second application, he wanted to produce on file a photocopy of the agreement to prove his possession.

Learned first appellate Court after noticing that defendant no.5-appellant was given 1½ years for producing his evidence, dismissed the applications. The learned first appellate Court has also noticed that more than 10 opportunities were granted to defendant no.5-appellant to lead his evidence. Learned first appellate Court further noticed that even the original agreement has not been produced with the application for additional evidence.

I have heard counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that proper opportunity was not granted to the appellant to prove his case. Learned counsel has admitted that the learned trial Court had fixed the case for the evidence of the defendant no.5 for the first time on 05.01.1993. Thereafter, more than 10 opportunities were granted to defendant no.5 from 05.01.1993 to 05.04.1994 i.e., spanning over a period of 1 year and 4 months.

Argument of learned counsel for the appellant is that on 05.04.1994 when the evidence was closed, the local bar was on strike, therefore, he could not lead any evidence.

On a specific query, learned counsel for the appellant clearly admitted that on that day there is no material available on the file to prove

that any evidence of the defendant was present and the Court had refused to examine the witness on the ground that the local bar is on strike.

This is a case where small plot is in dispute. Defendant no.5 had taken a plea in the written statement that he is in possession since 1957. He failed to prove that fact. The defendant no.5 had relied upon an agreement, original whereof was not produced before the courts below.

Still further defendant no.5 was found to be carrying on construction in violation of the injunction which had been granted. Local Commissioner was appointed. Local commissioner reported that the appellant is constructing the boundary wall. No objection to the Local Commissioner's report was filed.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

December 07, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No