

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

RSA No.3220 of 2013 (O&M)

Date of decision : 08.09.2017

Chand Kaur and others

...Appellants

Versus

Gurmail Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Rangpuri, Advocate for the appellants.

Mr. K.S. Brar, Advocate for
Mr. I.S. Brar, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.8628-C of 2013

For the reasons stated in the application, which is duly supported by an affidavit, delay of 60 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The legal representatives of the plaintiff are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for permanent injunction restraining the defendants from interfering into the peaceful physical possession of the

plaintiff over the land measuring 13 marlas and 3 sarsahi. It is the case of the plaintiff that during the consolidation of holdings, this area was kept for *Mistri* (Mason) community whereas defendants belong to Jatt Sikh community and, therefore, the defendants have no right to interfere with the possession of the plaintiff.

Defendants on notice contested the suit and pleaded that the plaintiff has filed a wrong site plan and the plaintiff has no right, title or interest in the property.

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

Appeal filed by the plaintiff was also dismissed after re-appreciating the evidence available on the file.

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

Learned counsel for the appellants has vehemently argued that the Courts have not appreciated the evidence in proper prospective. Learned counsel has further argued that the plaintiff had examined as many as 6 witnesses. However, their evidence had not been properly appreciated.

On the other hand, learned counsel for the respondents has supported the judgments passed by the Courts below. He has further submitted that there is a concurrent finding of fact which cannot be interfered by this Court in Regular Second Appeal.

I have considered the submission of learned counsel. There is no document available on the file to prove that this area was left for *Mistri*

(Mason) community. Apart from oral evidence, no other evidence has been produced. The Courts below have appreciated the evidence and discussed the statement of the parties. Courts have found that the plaintiff has failed to prove his possession. He has to stand on his own legs. This is only a suit for permanent injunction. There is no issue with regard to the title of the property. In absence of any documentary evidence to prove that the plaintiff is in possession, there is hardly any ground to interfere with the concurrent findings of fact. The findings arrived at by the Courts below are after appreciation of the evidence.

Counsel for the appellants could not point out any substantive misreading of the evidence. It is a case of appreciation of the evidence but the Courts below have already appreciated the oral evidence available on the file.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

08.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No