

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2748 of 2015(O&M)

Date of Decision: 16.11.2017

Parvez Kumar

... Appellant

Versus

Sheikh Abdul Manan

... Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Hitesh Kaplish, Advocate,  
for the appellant.

**RAJIV NARAIN RAINA, J.(Oral)**

This is plaintiff's second appeal in a civil dispute with the defendant over possession over a residential house in the *abadi deh* of the village within the *lal lakir*. The pleaded case set up by the plaintiff is that the mother of the plaintiff had inducted the defendant as a tenant for three months rent free. This allegation was denied by the defendant in his written statement and the parties went to trial. The plea of the plaintiff is oral and not supported by any documentary evidence. It remains a bald statement denied by the other side. The burden of proof was on the plaintiff to show that he was owner of the property before he could recover possession of the suit property from the defendant.

On the other hand, the defendant produced sufficient pieces of evidence to show that he was in possession of the suit property by lawful means. He produced an electric connection in his name, passport, voter-cum-identity card, electoral rolls etc. to show that he was in possession in the suit for permanent injunction.

The site plan remained a grey area on the fourth side of the

boundary which was the disputed side and therefore, it could not be said that property was demarcated in a way to show the exclusive ownership of the plaintiff over the corpus of the litigation.

The trial Court decreed the suit holding that the plaintiff has legally succeeded his father as owner of the suit property. Aggrieved, the defendant appealed under Section 96 of the CPC to the Court of the learned Additional District Judge, Kapurthala for setting aside the judgment and decree.

The appellate authority did not agree with the findings of the trial Court on the evidence and reversed the judgment and decree. The appellate Court accepted the defence of the defendant and the evidence produced by him proving that the property in possession of the defendant was not the same as the one claimed by the plaintiff in the suit. In absence of identity over every inch of the land in dispute, the suit for possession and for restraining the defendant from raising or making any construction or changing nature of the suit house could not be decreed on the material produced by the parties on record.

The plaintiff cannot shrug off his onus to prove his case and find solace in the weaknesses of the case of the defendant since he had to stand on his own legs and produce the best evidence to establish his case. There are other multifarious facts, which need not to be gone into in second appeal as they are of little consequence in the ultimate decision of the learned first appellate Court that defendant's house bearing No. BXXVI/11 had nothing to do with what was claimed by the plaintiff. The plaintiff did not base his suit on municipal record and rather of the site plan and boundaries of the house and even the trial Court held that it was not conclusive to prove ownership,

besides a municipal entry is not evidence of title. Accordingly, the decree of possession in favour of the plaintiff granted by the trial court was rightly set aside. I have no reason to disagree with the findings of fact recorded by the lower appellate Court based on proper reading of pleadings and appreciation of the evidence on record and thus find no room for interference on the second appeal side of this Court in terms of Section 41 of the Punjab Courts Act, 1918, a jurisdiction which has been recognized as applicable law in Punjab and Haryana by the Five-Judge Bench of the Supreme Court in *Pankajakshi (D) through LRs. & others vs. Chandrika & Others.*, (2016) 4 SCC 68 : AIR 2016 SC 1169

Dismissed.

16.11.2017  
monika

(RAJIV NARAIN RAINA)  
JUDGE

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|----------------------------------|------------|
| <i>Whether speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether reportable</i>        | <i>No</i>  |