

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4819 of 2015 (O&M)

Date of Order: 09.08.2017

Boor Singh

..Appellant

Versus

Joginder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.M.Munjal, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral).

C.M.No.11556-C of 2015

Prayer in this application is for condonation of delay of 12 days
in filing the appeal.

For the reasons recorded in the application, which is supported
by an affidavit, the same is allowed and delay of 12 days in filing the appeal
is condoned.

RSA No.4819 of 2015

Defendant is in regular second appeal against judgment and
decree passed by the Additional District Judge, Jalandhar, dated 24.03.2015.

Plaintiffs had filed a suit for permanent injunction restraining
the defendant from interfering in their possession over land measuring 9
kanals 0 marla, situated in the village Mandala Channa, Tehsil Shahkot,
District Jalandhar.

Defendant contested the suit and claimed that the defendant is
in possession of 8 kanlas of land.

Learned trial Court after appreciating the evidence available on
the file, chose to dismiss the suit on the ground that plaintiffs have not

proved their possession. There is a demarcation report, Ex.D1, which prove possession of defendant over land measuring 4 kanals 1 marla.

Plaintiffs filed first appeal. Learned first appellate Court after re-appreciating the evidence available on the file, accepted the appeal, while reversing the judgment of the trial Court.

Learned First Appellate Court has recorded that there is a continuous revenue record showing plaintiffs to be in possession of the property, in dispute. Learned First Appellate Court has further held that Local Commissioner had no jurisdiction to report about the possession. The finding with regard to possession can only be recorded by the Court after appreciating the evidence available on the file.

I have heard counsel for the appellant and with his able assistance gone through the judgments and decrees passed by the Courts below.

Learned counsel for the appellant has argued that once there was report given by the Local Commissioner, who visited the spot and reported to the Court that defendant is in possession of part of the disputed property, the learned first appellate Court committed illegality in ignoring the report of the Local Commissioner. Learned counsel for the appellant has further argued that no doubt plaintiffs are owners. However, possession of the defendant is established. Entries in the revenue record, although, carry presumption of truth but such presumption is rebuttable.

I have considered the submissions made by the counsel for the appellant.

It is a well settled law that the Local Commissioner cannot report about the possession in favour of a particular party. The local

Commissioner is appointed only for the purpose of local investigation. Local Commissioner cannot be appointed for the purpose of determining who is in possession. This is the function of the Court and the Court has to record a finding after appreciating the evidence available on the file.

Learned first appellate Court has relied upon judgment passed by this Court reported as 2013(1) Civil Court Cases 668, wherein it was held that finding with regard to the possession over the suit property cannot be left to the spot inspection by petty revenue official.

I have considered the submissions made by the counsel for the appellant. However, there is consistent/continuous revenue record showing plaintiffs to be owner in possession. The plaintiffs have produced on file jamabandies from 1970-71 continuously. The possession of the appellant/defendant is not recorded in any of the record. The defendant has not claimed any right, title or interest in the suit property. It is a plain land. In these circumstances, the submissions made by the counsel for the appellant cannot be accepted.

Taking into consideration the facts and circumstances of the case, I do not find any error in the judgment passed by the first appellate Court. Therefore, the regular second appeal is ordered to be dismissed.

August 09, 2017
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(ANIL KSHETARPAL)
JUDGE

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