

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 11.12.2017****RSA No.5156 of 2015 (O&M)**

Amar Singh & others

...Appellants

Vs.

Nirmail Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurmeet Singh, Advocate, for the appellants.

RAJIV NARAIN RAINA, J. (ORAL)

1. This is defendants' appeal against the judgment and decree dated 28.04.2015 passed by the learned Additional District Judge, SAS Nagar, Mohali affirming the judgment and decree dated 30.09.2013 rendered by the trial Court.

2. The plaintiff had succeeded in proving his possession over the suit property falling in Nagar Panchayat Deh of the revenue estate of Village Handesra, Tehsil Dera Bassi, District SAS Nagar (Mohali) as per jamabandi for the year 2003-04. The suit property is *Gair Mumkin Ruri* falling in Khewat No.220, Khasra No.1200(0-2) situated in the revenue estate of said village. The suit was filed against the appellants to restrain them from interfering in the peaceful possession of the plaintiff over the suit property.

3. It appears that both the sides are related as cousins. Their fathers had settled their shares by way of a family settlement and the disputed land fell to the share of the plaintiff and, therefore, his name is reflected in the jamabandi and in the khasra girdawaris.

4. On the other hand, the appellant/defendants have not produced any proof of right, title or interest in the suit property, which is a small piece of land comprising 2 biswas meant for tethering cattle and storage of fuel wood, dung cakes etc.

5. Though neither of the parties can be said to be owners of the land truly speaking, which right vests in the Nagar Panchayat, but they have long settled possession over their respective properties and the plaintiff over the suit property, which is not to be lightly disturbed. The defendants-appellants have failed to evoke any interest in the trial Court or in the Appellate Court to accept their side of the story claiming a triable defence against the plaintiff. The oral testimonies of the witnesses also support the version of the plaintiff being far stronger in evidentiary value than that of the defendants as far as possession is concerned. The property falls in *Abadi Deh* within the *Lal Dora*.

6. It may be noted that the appellants had moved an application under Order 18 Rule 17 CPC for bringing on record a report of the Sub Divisional Magistrate dated 30.07.2007 as additional evidence before the trial Court, which was dismissed. Aggrieved by that order, a revision petition was filed in this Court by the present appellant. While dismissing the revision petition, this Court directed the defendants to file fresh application before the trial Court, which was again dismissed. Thereafter, another attempt was made before the first Appellate Court to place on record the same document, namely, the report of the SDM dated 30.07.2007 showing that the defendants are in possession of the suit property. The first Appellate Court also dismissed the application while recording following findings in Para.14:

“14. Perusal of record reveals that the order was passed by SDM on 30.07.2007 and it seems imprudent on the part of defendants that a document which came into existence in 2007 especially when it is stated to be essential for proper decision of the suit, was not even applied for by defendants during the stage of evidence. Even while filing the appeal no such application for adducing additional evidence was filed by defendants. It was only when the case was fixed for final arguments, defendants moved the instant application. Order 41 Rule 27 CPC embodies the provisions for adducing additional evidence at the appellant stage only in the eventualities as mentioned therein, but the application under Order 41 Rule 27 CPC cannot be merely allowed to fill up the lacuna. Keeping in view the afore mentioned facts and circumstances, the application in hand is hereby dismissed.”

7. A perusal of the above findings shows that the application under Order 41 Rule 27 CPC was moved at the 11th hour after the appeal had matured for arguments and, therefore, the approach was belated. Once the similar and identical application was rejected, then it would not be for this Court to permit the appellants to re-agitate the matter involving the same document i.e. the report of the SDM.

8. Consequently, I do not find any merit in the instant regular second appeal or a case justifying upsetting the concurrent findings of fact, accordingly the appeal is ordered to stand dismissed in *limine* with no question of law arising for consideration.

11.12.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>