

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

RSA No.5180 of 2015 (O&M)

Date of Decision: 27.7.2017

Ram Singh and others

... Appellants

Versus

Pyare Lal (deceased) through LR's and others

... Respondents

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

Present: Mr.Johan Kumar, Advocate for the appellants

RAJIV NARAIN RAINA, J. (ORAL)

1. This appeal was filed in 2015 but has not seen the light of preliminary hearing for admission as no one appeared on behalf of the appellants on two previous dates. The matter has been heard today and I have no reason not to dismiss the appeal as it has no merits. The reasons follow.

2. This regular second appeal has been filed against the judgment and decree dated 9th March, 2015 passed by learned District Judge, Palwal reversing the judgment and decree dated 12th March, 2013 passed by the trial court. Plaintiffs, the appellants herein filed the suit for permanent injunction for restraining the defendants, respondents herein, from interfering in their peaceful possession over the suit property as described in the plaint and for restraining the defendants from forcibly dispossessing the plaintiffs except in accordance with law.

3. The trial court decreed the suit in favour of the plaintiffs/appellants whereas the learned first appellate court has reversed the findings of the trial court and dismissed the suit.

4. The entire case of the plaintiffs/appellants rests on an affidavit, Ex.P-1 which was not pleaded in the plaint. If it was not pleaded, no evidence could be produced to prove it. Claim can depend entirely on legal evidence upon a pleaded case. The attestant, Pyare Lal who swore the affidavit died shortly before the suit was filed. No evidence was led by the plaintiffs to show that the document bore the thumb-impression of Pyare Lal through whom they claimed rights. To make the case of the appellants/plaintiffs still worse, the document Ex.P1 was produced in rebuttal evidence after substantial evidence had come in.

5. By then, it was too late to save the day and the error committed by the trial court in relying on Mark 'A' and Mark 'A/h' and Ex.P1 to decree the suit has been cured by the learned District Judge, Palwal in her judgment dated 9th March, 2015 by allowing the appeal and dismissing the suit. Ex.P-1 has no evidentiary value nor could title to property be traced to it to show the suit property belonged to the plaintiffs for them to obtain a decree.

6. On the basis of the lack of evidence and relevant materials on record justifying a decree in favour of the plaintiffs, it is not possible for this Court to interfere with the findings of fact recorded by the learned first appellate court after correctly dealing with the affidavit that possession and title had been handed over to the opposite party.

7. The judgment and decree of the learned District Judge, Palwal does not suffer from any illegality, irregularity or perversity nor the same can be said to be tainted with any error apparent on the face of record so as to require interference by this Court in this second appeal. No question of law, much less a substantial one, arises for consideration in this appeal.

8. For the foregoing reasons, this appeal is held to be without any substance and involves no legal issue. The judgment and decree dated 9th March, 2015 passed by the learned District Judge, Palwal is upheld and this regular second appeal is dismissed with costs as assessed by the courts below.

27.7.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No