

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

**RSA No.3609 of 2017 (O&M)  
Date of Decision: 13.07.2017**

**Mukesh Kumar (deceased) through his LRs ..... Appellant**

**Versus**

**Suresh Kumar (deceased) through his LRs and another**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. Sanjay Mittal, Advocate  
for the appellant(s).

**DEEPAK SIBAL J. (ORAL)**

The appellant, who was one of the defendants in the suit has filed the present appeal to challenge therein the concurrent findings recorded by the Trial Court as also the Appellate Court while decreeing the suit for permanent injunction instituted by the plaintiff-respondent No.1.

The plaintiff/respondent No.1 had preferred a suit for permanent injunction against the defendants, who are his real brothers. The case set up by the plaintiff/respondent No.1 was that Ram Niwas, father of the parties to the suit, was a co-dohldidar over the land comprising in Khewat No.1211 Rect. No.126 Khasra No.1103/1074 Khatoni No.1211 Rect. No.126 Khasra No.41 measuring 3 kanal 11 marlas Gair Mumkin Ghair situated in the revenue estate of village Beri Khas, Tehsil Beri District Jhajjar (herein after referred to as the suit property) and during his life time, out of the above-referred land, the parties to the suit were put in possession of their respective shares. To prove such assertion, respondent No.1, along with his plaint, had attached *Jamabandi* for the year 2004-05.

A site plan was also produced in which respondent No.1 had depicted the land in possession of the respective parties. Constructions raised by each of them were also shown therein.

After sifting the evidence which had come on record and consideration of the pleas raised by either side, the Trial Court, after concluding that the case set up by plaintiff-respondent No.1 was worthy of credit, decreed his suit against which the defendants preferred an appeal which was dismissed by the Appellate Court giving a cause to the appellant to approach this Court through the present second appeal.

Learned counsel for the appellant submitted that in order to establish their respective claims qua possession over the land in question, both the parties to the suit had produced site plans. However, site plan (Ex D-1) which was relied upon by the appellant/defendant was wrongly discarded and the site plan (Ex P-1) produced by plaintiff-respondent No.1 was erroneously relied upon since the draftsman who had allegedly made it had not been produced. He further submitted that it was highly inequitable for both the Courts to have accepted the site plan produced by the plaintiff/respondent No.1 as the same depicted the plaintiff/respondent No.1 him to be in possession of nearly half of the property of their father and the other half in the possession of the other two brothers.

After hearing learned counsel for the appellant, I am of the opinion that the present appeal must fail.

It is not disputed that Ram Niwas was recorded as co-dohlidar of land measuring 3 kanal 11 marlas and that after his death, the parties to the suit inherited the dohli rights in the suit property.

To prove his possession, the plaintiff/respondent No.1 produced site plan (Ex P-1) and proved the same through his own deposition. In the site plan, he is shown to be in possession of the suit property on the Eastern side whereas the possession of the defendants is shown on the Western side.

To refute the plaintiff's claim, the defendants produced site plan (Exhibit D-1) showing the appellant-Mukesh to be in possession of the suit property on the far Eastern side, the plaintiff-respondent No.1 in the middle and the Western part of the suit property to be in possession of co-defendant-Deepak.

Witnesses produced by the defendants had admitted that Exhibit D-1 had not been prepared at the site; that the same was made in the Court complex itself and at the instance of the defendants. Further, DW-1 Sunita, wife of the appellant had admitted the possession of two shops with Mukesh in the South Western side of the suit property whereas as the site plan (Ex D-1) produced by the appellant Mukesh was shown to be in possession of only the Eastern Side with co-defendant Deepak to be in possession of the entire Western side. On the other hand, the site plan (Exhibit P-1) produced by plaintiff-respondent No.1 was found to have been prepared at the spot and that same was duly proved by respondent No.1 through his own testimony which in spite of lengthy cross-examination remained unshaken.

There being no other documentary evidence produced by either side, both the Trial Court as also the Appellate Court weighed the credibility of above site plans. In view of the above, the site plan (Ex P-1) which was produced by the plaintiff/respondent No.1 was found to have

been proved and worthy of credit. The same was therefore accepted. On the other hand, the site plan (Ex D-1) produced by the appellant was concurrently discarded.

DW-1 Sunita and DW-2 Deepak further admitted that they were having possession of 150 sq. yds. of land each on which they had also raised constructions. Both the Courts below thus concluded that the parties to the suit were in possession of their respective shares as per site plan (Ex P-1). Nothing was pointed out by learned counsel for the appellant for me to take a different view.

The argument raised by learned counsel for the appellant that site plan (Exhibit P-1) could have not been made the basis for decreeing the suit of plaintiff-respondent No.1 as the draftsman, who had prepared the site plan, had not been produced is to be considered only to be rejected. It is true that it is always worthwhile that when a site plan is produced, the draftsman, who has prepared the site plan be produced to prove the same but in the facts of the case in hand where the site plan has been proved by the plaintiff, whose deposition in that regard, when put to lengthy cross-examination remained unshaken, it cannot be held that only in view of the non production of the draftsman, the site plan in itself should have been discarded especially when except the two site plans tendered by each of the parties to the suit, no other documentary evidence had been led and the site plan (Ex D-1), produced by the appellant had not been found to be worthy of credit.

The other argument of learned counsel for the appellant based on equity also deserves to be rejected as only a suit for permanent injunction filed by the plaintiff-respondent No.1 has been decreed on the

basis of actual physical possession of the plaintiff-respondent No.1 as found at the spot. Such a decree of course does not decide the ownership rights and since the parties to the present litigation are co-owners, the same is further subject to any partition proceedings that either of the parties may institute.

In view of the above, I find no reason to differ with the concurrent findings recorded by the Trial Court as also the Appellate Court which are based on appreciation of both oral and documentary evidence which had come on record.

Dismissed.

**July 13, 2017**

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**(DEEPAK SIBAL)  
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No