

Sr. No. 111

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

**RSA No. 4090 of 2017(O&M)
Decided on: 31.08.2017**

Avtar Kaur

.....Appellant

versus

Hardev Kaur

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Mansur Ali, Advocate
for the appellant.

Mr. Naresh Kaushik, Advocate
for respondent.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the plaintiff against the concurrent findings, judgments and decrees passed by the Courts below, dismissing the suit for permanent injunction filed by her.

The brief facts of the case are that the present appellant claimed that she was owner in possession of the suit property mentioned in the plaint and that she had raised the boundary wall around the property in question. It was further pleaded by the appellant herein that the defendant was totally stranger to the property having no right or concern with the property in question. She was bent upon to dispossess the plaintiff from the property in question, therefore, the injunction was claimed.

On notice, the respondent herein/defendant in the suit disputed the ownership and possession of the plaintiff over the suit property. The

defendant also claimed the ownership and possession over the suit property.

Parties led their respective evidence.

After appreciating the evidence, learned Trial Court dismissed the suit filed by the plaintiff by recording a finding that the plaintiff has failed to prove not only the ownership over the suit property but even the physical possession over the suit property.

Aggrieved of the judgment and decree passed by the Trial court the present appellant filed the appeal before the lower Appellate Court. However, lower Appellate Court also dismissed the appeal filed by the present appellant. Besides the appeal, the lower Appellate Court also dismissed the application filed by the present appellant for leading the additional evidence before the lower Appellate Court.

Aggrieved of the judgment and decree passed by the lower Appellate Court, the present appeal has been filed.

In the present appeal, learned counsel for the appellant has argued that the application filed by her for leading the additional evidence has wrongly been dismissed by the lower Appellate Court alongwith the main appeal itself. It is his contention that had the application for leading additional evidence been decided before the final decision of the appeal then she would have availed her remedy against such order. It is further contended by learned counsel that she was to lead documents in additional evidence to show that she is in possession of the suit property.

On merits, it is the contention of the learned counsel for the appellant that the respondent herein/defendant has failed to prove her ownership over the suit property and learned Courts below have wrongly relied upon the judgment and decree passed in some other suit and produced

by the respondent herein/defendant regarding the title of the suit property.

Learned counsel for the appellant has further argued that, in any case, the defendant has failed to prove the better title as compared to the plaintiff. Therefore, it is the contention of learned counsel; that the plaintiff has been wrongly non-suited.

After considering the arguments of the learned counsel for the appellant, it is clear that the appellant herein has failed to prove any title over the suit property by any document, may be rightly, because suit property is situated within the 'Lal Dora'. However, since the appellant had come before the Court as plaintiff, therefore, it was incumbent upon her to prove her possession to sustain her claim for injunction against the defendant. To prove the possession of the plaintiff over the suit property, the plaintiff has not examined any other witness nor has produced any document as an evidence. Therefore, there is nothing wrong with the findings recorded by the Courts below that the plaintiff has failed to prove the physical possession over the suit property.

The submission of learned counsel for the appellant that her application for leading an additional evidence has been wrongly dismissed is also to be noticed only to be rejected. There is nothing illegal if the application for leading an additional evidence is decided along with the main case. At the time of decision of the application, if the lower Appellate Court had come to the conclusion that the evidence sought to be produced as an additional evidence was necessary and material and could not be produced earlier despite due diligence, the Court would have definitely allowed the same. However, the finding has rightly been recorded by the lower Appellate Court that the document is already on record of the case but

still that record does not support the case of the plaintiff for the reasons mentioned by the lower Appellate Court. Hence, there is no illegality in dismissal of the application moved by the appellant herein to lead the additional evidence. Otherwise, also learned counsel for the appellant submits that while leading the evidence he would have produced some record regarding the laying down of the pipe lines by the departmental authorities to the suit property for supply of water. For that he has relied upon the two documents i.e. Ex:P-1 and P-2. However, these documents also do not show that these documents have even been issued; even by the Water Supply Department of the Government.

Even the perusal of the testimony of the plaintiff as PW shows that she has specifically denied the factum that she is in possession of any document to show her possession over the suit property. Therefore, the effort to create some document as additional evidence seems to be only an after thought. Not only this, in the testimony the plaintiffs/appellant herein has also categorically admitted that she has not received the suit property by any legal means of disposal of the property i.e. either by sale, Will or by way of inheritance. This discredits the case of the plaintiff in its entirety.

Faced with this situation, learned counsel for the appellant has submitted that the respondent/defendant has failed to prove her title and she does not have atleast, the title better than the title of the plaintiff. This argument of learned counsel for the appellant is also not worth acceptance. Since the appellant herein was the plaintiff in the suit, therefore, it was for the plaintiff to lead the cogent evidence to substantiate her plea. The plaintiff in, any case, cannot claim to rely upon the weaknesses of the

evidence of the defendant in the suit.

No other argument was raised by learned counsel for the appellant.

In view of the above, the judgments and decrees passed by the learned Courts below are affirmed. The present appeal fails and the same is hereby dismissed being devoid of merits.

31st August, 2017
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*