

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

**RSA No.4105 of 2005 (O&M)
Date of Order: 08.08.2018**

Dharambir and others

..Appellants

Versus

Karan Singh (deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep K. Sharma, Advocate,
for the appellants.

Mr. M.L.Sharma, Advocate, and
Mr. Sushil K. Sharma, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs through their legal heirs are in the regular second appeal against the judgments and decrees passed by the courts below.

Question of law which needs consideration/determination is “whether in a suit for permanent injunction where plaintiffs prays for grant of decree for possession in alternative, could the suit be dismissed on the ground that the suit is merely for permanent injunction”.

Some facts are required to be noticed.

Plaintiffs claiming to be proprietors of the village and Shamilat land, filed a suit for permanent injunction restraining the defendants from interfering in their possession. It was further pleaded that in case the defendants are successful in dispossessing the plaintiffs, a decree for possession be passed.

Plaintiffs pleaded that in the previous litigation, decided on

29.07.1957, plot in dispute measuring 1044 sq. yds. bearing No.883/3 was allotted to them which has been bounded upto plinth level and certain “kikkar” plantation is existed.

Defendants contested the suit and pleaded that the plaintiffs are non-proprietors and there was no allotment in their favour. Defendants claim that they are proprietors of the village and they had previously installed a sugarcane crusher 40 years back and now they are in possession of the property. In the alternative, defendants also pleaded that they have perfected their title by way of adverse possession.

After appreciation of evidence, both the courts have found that the plaintiffs were successful in proving their case. Courts have further found that pursuant to decree dated 29.07.1957, plaintiffs or their predecessors were allotted plot no.883/3, measuring 1044 sq yds. in a civil court decree for partition. However, as noticed above, the courts dismissed the suit on the ground that the suit is only for permanent injunction and there is no prayer for grant of relief of possession.

At this stag, it would be appropriate to notice the prayer made in the suit:-

“A decree for permanent injunction to effect that the suit of the plaintiff be decreed in favour of the plaintiff and against the defendant restraining the defendants permanently from interfering in the peaceful possession of the plaintiffs and further restraining the defendants from raising any construction over the suit property plot no.88/3 measuring 1044 sq. yds during the aforesaid partition. The plot is bounded as under:-

*West:- Rasta Share Aam, North: Plot No.883/2 of Om Parkash s/o Maru South:- Plot of Rai Singh s/o Dalel & Rai Singh s/o Pirthi, East:- Plot No.883/1 Ram Phal s/o Jage & Mam Chand s/o Bhan Ram etc. site plan of plot is attached. **If the defendants take possession during pendency of the suit of the defendants be directed to hand over the possession to the plaintiffs.**”*

It is apparent that the plaintiffs had prayed for a decree for possession. Hence question which has been framed earlier is answered in favour of the appellants.

Still further courts have erred in dismissing the suit filed by the plaintiffs. It is not in dispute that the property is a vacant piece of land. Possession of a vacant piece of land always follows title. In the present case, both the courts have found that the plaintiffs are owners pursuant to a civil court decree for partition dated 29.07.1957. Defendants failed to prove that the aforesaid land was either allotted to them or they have perfected their title by way of adverse possession. Merely putting cow dung cakes in a vacant piece of land does not prove exclusive adverse possession.

In view thereof, the regular second appeal is allowed. Decree for possession is passed in favour of the plaintiffs while setting aside the decree passed by both the courts below.

August 08, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No