

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

(117)

RSA-1962-2016 (O&M)

Date of Decision: October 31, 2018.

Lal Singh

..Appellant

Versus

Bir Singh and others

..Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jai Vir Yadav, Advocate, for the appellant.

AMIT RAWAL, J. (ORAL)

CM-5208-C-2016

For the reasons stated in the application, delay of 30 days in re-filing the appeal is condoned.

The application is allowed.

RSA-1962-2016 (O&M)

The appellant-plaintiff has not been successful in claiming mandatory injunction against the defendants to remove the foundation/wall from Mark E to F and D to E and a further prayer for permanent injunction restraining the defendants from forcible interference and dispossession.

Appellant-plaintiff claimed that the plot was inherited from his father who had occupied the same as vacant plot in the Abadi of the village about many years ago and had constructed one room, installed a fencing wire on eastern and northern side of the plot. The defendants had no concern in any manner with the plot in dispute but in the absence of the plaintiff, they started to encroach upon the portion ADEF by raising wall on mark E to F and D to G and had already installed the foundation and were also raising wall over it. When the aforementioned fact came to the knowledge of the plaintiff, he tried to intervene but the defendants threatened him.

The defendants denied the exclusive ownership of the plaintiff but claimed that they have been owner in possession of the half western portion of the plot and plaintiff in the other half portion towards the eastern side.

On the basis of the pleadings and evidence, led on behalf of the parties, the trial Court dismissed the suit holding that possession over the plot in dispute was not forcible but the defendants were in exclusive possession thereof. The appeal before the lower Appellate Court, was also dismissed.

Mr. Jai Vir Yadav, Advocate, appearing on behalf of the appellant, submitted that once the defendant had admitted that the parties were joint owner in possession in dispute, therefore, injunction can always be granted in view of the parameters laid down by the Full Bench of this Court in **Bhartu Vs. Ram Sarup, 1981, PLJ 204**, thus, there is illegality and perversity in the judgments of the Courts below.

I have heard learned counsel for the appellant and in view of the categoric stand taken in the written statement with regard to possession of the parties towards the eastern and western side and on the basis of evidence brought on record, the defendant was found to be in exclusive possession of the property.

Thus the arguments of learned counsel for the appellant is not sufficient to bring the case within ambit of the perversity to form different opinion as against the one arrived at by the Courts below.

I do not find any illegality and perversity in the impugned judgment and decree of the Courts below and no substantial question of law arises for determination.

The appeal is dismissed.

October 31, 2018.
harsha

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No