

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

**RSA No.2903 of 2015 (O&M)
Date of Decision.31.10.2018**

Ajit Singh and another

.....Appellants

Vs

Jaswant Kaur and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Arora, Advocate
for the appellants.

~.-

AMIT RAWAL J. (ORAL)

The appellants-plaintiffs preferred regular second appeal against the judgment and decree of the lower Appellate Court, which has set aside the judgment and decree of the trial Court whereby suit for permanent injunction seeking restraint order against the defendant in respect of vacant plot measuring 20 marlas as described in the suit was decreed.

As per the case set out in the plaint, plaintiffs claimed to have inherited the suit property from their father Mukhtiar Singh, who died in the year 2002 and had been in possession since then. Defendant No.1, Jaswant Kaur extended threat to forcibly dispossess the plaintiffs, which gave cause of action to institute the suit.

The defendants contested the suit on the premise that the property was owned by Onkar Singh, her son vide sale deed dated 11.08.1998.

On preponderance of the evidence, trial Court decreed the suit on the premise that Ex.D1 produced by the defendants referred to khasra numbers whereas the land situated is in *lal dora*

and does not specify khasra numbers. However, in appeal the lower Appellate Court reversed the finding on the premise that the appellants-plaintiffs have failed to prove their ownership *vis-a-vis* sale deed brought on record.

Mr. Amit Arora, learned counsel appearing on behalf of the appellants-plaintiffs submitted that Onkar Singh, DW3 candidly admitted that the suit land was few metres away from the land which he had purchased, in essence, identity of the property was in dispute but yet the defendants claimed ownership of the same. In such circumstances, the lower Appellate Court being the last court of fact and law ought not to have reversed the well reasoned finding. The site plan Ex.P1 was prepared by draftsman Kulwant Singh, who in his testimony as PW2 proved by disclosing that the same was prepared after visiting the spot, thus, there is fallacy.

I am afraid aforementioned argument of Mr. Arora is not sustainable, for, it was incumbent upon the plaintiffs to discharge the onus to clarify the dispute with regard to identity of the property, particularly when emphasis has been laid to the cross-examination of DW3 Onkar Singh. Injunction can be granted in favour of a person, who has been in long and settled possession but the plaintiffs did not place on record any material to prove the same. The Hon'ble Supreme Court in the ratio decidendi culled out in **Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRs (2004) 1 SCC 769** held that if a person has been able to prove long and settled possession, he cannot be dispossessed except in due course of law. However, the situation in this case is not the one as culled out in the

aforementioned judgment.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Arora to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 31, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No