

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

**RSA No.6438 of 2016(O&M)
Date of Decision: 28.08.2018**

Chand Kaur

..... Appellant

Versus

Budhram and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Ajay Ghangas, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction.

[2]. Plaintiff filed a suit for permanent injunction on the ground that plaintiff is in possession of *shamlat* land which is being used by her for storing cow-dung cake in the shape of bitora and tethering cattles.

[3]. The claim of the plaintiff was denied by the defendants by asserting that son of the plaintiff earlier filed a suit in

collusion with the plaintiff where no stay was granted and filing of the present suit has been financed by son of the plaintiff. The property of the defendants is situated towards northern side of the suit property and the suit property is being used by defendant No.1. The possession of the plaintiff was denied altogether.

[4]. After framing of issues, both the parties went to trial on the issues so framed by the trial Court. Issue No.1 was to the following effect:-

(i) Whether plaintiff is entitled to decree for permanent injunction as prayed for? OPP

[5]. As per site plan Ex.P1 produced by the plaintiff herself, the plot was shown as marked ABCD, but the house of the plaintiff was nowhere shown in the site plan. The house of defendant No.1 was shown besides vacant plot belonging to defendant No.1 in the site plan Ex.P1. Photographs Ex.PW5/A to PW5/D could not prove the user of the plot by the plaintiff, rather execution of photographs could not be proved with reference to the negatives. The photographer examined by the plaintiff could not demonstrate as to the place where the photographs were picturized.

[6]. Evidently, the suit property was marked by letters ABCD in the site plan produced by the plaintiff herself. The pleadings

of the plaintiff do not commensurate to the nomenclature of the site plan as shown in the site plan. The notice issued to the son of the plaintiff namely Subhash Ex.PW 4/A was in the context of removing kuraris from the phirni and patri of the drain. The suit property was depicted by letters ABCD and the subject matter of notice cannot be related to the property shown by letters ABCD in the site plan. The plot in question is neither on the phirni of the property nor in the land covered under patri of drain. PW 3 Subhash has also admitted that he has filed a suit against the defendants regarding the johar which was decided against him and the notice Ex.PW 4/A relates to some drain. Plaintiff herself while appearing as PW 2 in her cross examination admitted the possession of the defendants at the first instance, but thereafter, volunteered that they are using the plot in question forcibly.

[7]. By taking note of all the attending circumstances, both the Courts below have dismissed the suit concurrently. The evidence brought on record by the parties has been rightly appreciated by both the Courts below. There cannot be re-appreciation of evidence in regular second appeal as the findings recorded by the Courts below are not found to be on the basis of any misreading of evidence or perversity of any kind. No question of law worth consideration is involved in the present appeal. The present appeal is found to be totally devoid

of merits and the same is accordingly dismissed in *limine*. All the pending applications are also disposed of accordingly.

August 28, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No