

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

RSA No.5047 of 2015 (O&M)

Date of decision : 01.10.2018

Raja

...Appellant

Versus

Sunder Pal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manvinder Singh Dalal, Advocate for the appellant.

Mr. Vikas Chaudhary, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Learned trial Court decreed the suit with respect to land comprised in Khasra No.1202 whereas learned First Appellate Court after finding that as per the Demarcation Report, the plaintiff is also in possession of some portion of land comprised in Khasra Nos.1201 and 1203 has modified the decree and granted the injunction against the forcible dispossession.

It is not disputed that defendant No.1-appellant had filed a counter claim seeking possession but thereafter withdrew the same and has filed a separate suit for possession, which is pending.

Learned counsel for the appellant submitted that since the plaintiff had only claimed injunction qua khasra No.1202, therefore, the injunction with regard to other land could not be granted.

The plaint filed by the plaintiff is referring to a constructed shop and other construction. It has been specifically pleaded in para 2 of the plaint

that they were handed over the possession by Raj Kishan of some other land apart from the suit land. Para 2 of the plaint is extracted as under:-

“2. That the plaintiff has purchased the above said plot from Raj Kishan son of Shanker Singh vide affidavit dated 24.10.2010, which was attested by Executive Magistrate, Kalayat and since the date of purchase of the above said plot, the plaintiff is the owner in possession of the above said suit land, the plaintiff has also constructed the shop, latrine, tunti, boundary wall & trees bath room, verandah over the suit land alongwith other land.”

Learned First Appellate Court has modified the decree passed by the trial Court only for grant of injunction against the forcible dispossession. No declaratory decree in favour of the plaintiff has been passed. Defendant No.1 has already filed a suit for possession, therefore, the possession of the plaintiff is admitted.

In such circumstances, this Court does not find any good ground to interfere.

Regular Second Appeal is dismissed.

However, defendant No.1-appellant shall be entitled to proceed with the suit for possession and dismissal of the appeal would not adversely affect the rights of the appellant in other suit.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No