

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

RSA No.6649 of 2016 (O&M)
Date of Decision.13.12.2018

Karamveer

...Appellant

Vs

Vakil Chand

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.B. Raheja, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in seeking injunction against the defendant qua forcible interference and possession as reflected in the site plan dated 24.09.2009.

It was stated that the suit property was of Khasra No.85 being *abadi deh* of the concerned village and had been used for tethering cattle and storing of the fuel/agricultural implements.

Defendant opposed the suit on the ground of maintainability, non-joinder of necessary parties and on account of nature of the property to be *gair mumkin bara*.

The plaintiff in support of the aforementioned pleadings examined three witnesses and brought on record Ex.P1 to P3 i.e. site plan, copy of jamabandi for the year 2006-2007 and copy of judgment dated 5.8.2013 whereas the defendant examined six witnesses and brought on record Ex.D1 to D5 i.e. copy of DDR No.16 dated 14.4.2010, copies of resolution dated 31.5.2005 and 23.09.2009, copy of receipt dated 3.10.2013 and writing of compromise.

Mr. Raheja, learned counsel appearing on behalf of the

appellant submitted that defendant has not denied unauthorized possession of the plaintiff. The finding of the trial Court holding that the suit property was being used for common purposes is totally contrary to the jamabandi, which reflected the same as *abadi deh*. Injunction sought was innocuous qua forcible interference and dispossession, as a person who is in long and settled possession cannot be dispossessed except in due course of law.

I am afraid aforementioned argument is not sustainable, for, there is categoric finding that plaintiff came into possession of the suit property only subsequent to the filing of the suit. For bringing the case within the parameters of long and settled possession, as per the ratio decidendi culled out in the judgment rendered by Hon'ble Supreme Court in **Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRs (2004) 1 SCC 769**, possession has to established preceding to the filing of the suit and not during the pendency of the suit. The issue was not pertaining to the title, therefore, apprehension caused with regard to nature of land is wholly misplaced.

In view of the aforementioned observations, concurrent finding of fact and law cannot be faulted with. No substantial question of law arises for determination by this Court. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 13, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No