

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

RSA-2965-2017 (O&M)

Date of decision: July 30, 2018

Jai Vinder and another

...Appellants

Versus

Jagdish and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. S.S. Dinarpur, Advocate for the appellants.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff/appellants filed a suit for permanent injunction against defendants restraining them from encroaching upon and installing tower in their property and further directing to remove *Mulba* of structure therefrom and to award damages. Plaintiffs averred that joint property of the parties was partitioned on 14.09.2006 and possession was denied on 20.09.2006. As per Jamabandi for the year 2004-2005, plaintiffs were shown to be owners of half share, whereas defendants No.1 and 3 as owners of remaining half share in property comprised in Khewat No.532/491 Min, Khatoni No.630, Rect. & Killa Nos.49//18 (8-0), 19/2 (4-7) & 472 (1-0) *Gair Mumkin Bara*. Defendant No.1 after obtaining permission of defendant No.3 constructed his house in the half share as

shown in the *Aks-shajra* and the plaintiffs kept their half share vacant in northern side. When plaintiffs were busy in marriage of their sister, defendant No.2 i.e. B.S.N.L. started getting a tower installed therein. Aggrieved, plaintiffs filed instant suit. Suit was resisted by the defendants No.1 & 2 by filing their separate written statements. Defendant No.1 averred that in an oral family settlement, plaintiffs and defendant No.1 exchanged their share of the properties and plaintiffs had given their entire share to him in *Gair Mumkin Bara* bearing No.472 and in lieu thereof, he gave his entire share in Killa No.56/22/2, measuring 3 Kanals 4 Marlas, situated in Village Sudana, District Rohtak. However, said settlement was not entered in the revenue record. Thereafter, defendant No.1 leased out some portion of the *Bara* to defendant No.2 i.e. B.S.N.L., vide lease agreement dated 28.11.2008 for installing tower, after which the defendant No.2 constructed a room and laid foundation for installation of tower. He pleaded that he has been dragged into unnecessary litigation. Defendant No.2 B.S.N.L. has also taken similar pleas in its written statement. Issues were framed by the trial court on 17.03.2009.

After hearing both the parties and perusing the evidence as well as records, the trial court dismissed the suit filed by the plaintiffs. It observed that since plaintiffs could not prove their possession over the suit property, they are not entitled for the relief as claimed. Findings were affirmed by the lower appellate court.

I find no infirmity with the judgments passed by both the courts below. From a perusal of the impugned judgment passed by the

trial court, it reveals that plaintiff Jai Vinder while appearing as PW-1, in his cross-examination, admitted possession of defendant No.2 by deposing that B.S.N.L. had installed a mobile tower over the property in question. Only plea raised before this court is that judgments of two courts below are based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of concurrent findings of two courts below reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

CM-7393-C-2017 & CM-7394-C-2017:

Since the main appeal has been dismissed on merits, these applications for condonation of delay do not survive and the same are also dismissed.

(RAJAN GUPTA)
JUDGE

July 30, 2018
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No