

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

**RSA No.6362 of 2014 (O&M)
Date of Decision.28.05.2018**

Sombir

.....Appellant

Vs

Sukh Lal and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anil Kumar, Advocate
for the appellant.

None for the respondents.

-.-

AMIT RAWAL J.(ORAL)

C.M. No.15215-C of 2014

For the reasons stated in the application, delay of 33 days
in filing the appeal is condoned.

Application is allowed.

RSA No.6362 of 2014

The appellant-plaintiff had been unsuccessful in both the Courts below in obtaining permanent injunction restraining defendant No.1 to 3 from raising construction and to open door in khasra No.82 and in case, he succeeds, direction for closing the door and demolition of construction raised in khasra No.82 on the premise that plaintiff and pro forma defendants No.4 to 29 were owners in possession of the suit land vide jamabandi for the year 2003-2004. It was averred that defendant No.1 is the owner in possession of adjacent land bearing khewat No.10 khatoni No.11, khasra No.81(0-15) and defendant No.1 to 3 are bent upon to encroach the suit land and therefore, cause of action accrued to file the suit.

Defendant No.1 to 3 filed the written statement by taking preliminary objection. On merits, it was stated that defendant No.1 is owner in possession of khasra No.81 wherein he constructed his residence around 30 years ago and khasra No.82 shown with letters ABCD in the site plan was in possession of the defendants. In the earlier suit bearing No.372 titled as "*Chhaju Ram Vs. Sukh Lal*" it was held that Chajju Ram was not in possession of the suit property. The construction and iron gate had been in existence for the last 30 years.

Since the parties were at variance the trial Court framed as many as six issues including the issue of relief. The plaintiffs examined as many as five witnesses and brought on record documents like site plans, report of local commissioner, spot memo and notice etc. On the other hand, defendants examined six witnesses and brought on record various documentary evidence.

On the preponderance of the evidence, the trial Court dismissed the suit on the premise that the plaintiffs failed to prove alleged construction of the boundary wall and the iron gate. The appeal preferred before the lower Appellate Court also met with the same fate.

Mr. Anil Kumar, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the judgments and decrees rendered by the Courts below are not sustainable in the eyes of law, for, there has been misreading and mis-appreciation of the evidence as the site plan brought on record showed that the defendants had an excess from three sides. Misreading of the documentary evidence is

itself a perversity. Both the Courts below did not appreciate the fact that the defendants miserably failed to prove the possession over the suit property. In the earlier suit, the dispute was regarding northern side of khasra No.82 but in the present suit, the dispute is of western side of aforementioned khasra number. PW5 Chander Bhan, local commissioner stated that iron gate was existing over the house of Sukhlal though it was old but did not notice the fact that suit was filed on 01.08.2008 whereas the local commissioner was appointed on 17.08.2010. The report of the local commissioner with regard to the encroachment has not been rebutted by the defendants, therefore, there was no occasion for the Courts below for declining the relief.

There is no representation for the respondents which fact has also been noticed in the order dated 17.05.2018, therefore, I proceeded to decide the appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Anil Kumar, for, the local commissioner though stated in his report that there was an iron gate in existence and the wall but did not measure the area to enable the Court to form an opinion regarding the encroachment as alleged and specifically averred in the plaint. The plaintiff miserably failed to discharge the onus as per Section 101 of the Indian Evidence Act, for, in order to claim injunction, there has to be direct and cogent evidence regarding long and settled possession over the suit property and alleged attempt of dispossession or encroachment. Entire blame cannot be placed upon the defendants of not having led any evidence in support of

their averments. This is what precisely had been the import of the judgments rendered by the Courts below.

For the reasons aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below. The argument of Mr. Anil Kumar has not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 28, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No