

In the High Court of Punjab and Haryana at Chandigarh

RSA No.3530 of 2017(O&M)

Date of Decision: 4.9.2018.

Chanan Ram

---Appellant

versus

Jagdeep Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sandeep Punchhi, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 10.1.2017 passed by the Additional District Judge, Sirsa whereby appeal preferred by the respondent-plaintiff against the judgment and decree dated 26.3.2013 passed by the trial court has been allowed, the judgment and decree dated 26.3.2013 have been set aside and suit for permanent injunction restraining the defendants including the appellant from interfering in exclusive possession of the respondent-plaintiff over residential house marked A B C D E in the site plan constructed over portion of land comprising khasra No. 117 min, situated in village Mirzapur Ther, Tehsil Ellenabad, District Sirsa, forcibly and illegally and demolishing the Western wall of house or doing any mischief that amounts to interference into possession of the respondent-plaintiff over residential house, detailed in head note of the plaint was decreed.

Counsel for the appellant would argue that a question with regard to identity of the suit property was raised before the Court in Appeal but the same has been rejected. The jamabandi of disputed khasra number relied upon by the respondent-plaintiff does not record the appellant or his predecessor-in-interest to be in possession of the suit property, therefore, the respondent cannot derive any advantage to his contention from the alleged admission of Jagtar Singh taken note of in para 14 of the judgment of the Court in Appeal. In addition, counsel would state that he needs some time to go through the statement of Jagtar Singh in order to verify correctness of the facts noticed by the Court in Appeal.

I have heard counsel for the appellant, perused the paper book particularly the judgments passed by the courts and copy of site plan Ex. P1 supplied by counsel during the course of hearing.

Counsel for the appellant has not disputed that in the written statement filed by the defendants, they have not disputed identity of the suit property, therefore, the Court in Appeal has rightly rejected a factual plea qua identity of the property sought to be raised for the first time in appeal.

Counsel for the appellant was directed to go through the grounds of appeal raised before this Court. On perusal thereof, he has fairly conceded that the appellant has not disputed correctness of facts noticed by the Court in Appeal in para 14 of the judgment with regard to admission made by Jagtar Singh. A relevant extract from para 14 of the judgment passed by the Appellate Court, reads as follows:-

“As far as the possession of the appellant-plaintiff over the property in dispute as shown in site plan Ex. PA is concerned, the same has been admitted by the respondent Jagtar Singh in

his cross-examination while appearing in the witness box as DW1. In his cross-examination, he has admitted that it is correct that in the disputed property some portion is vacant, in some portion fodder is sown and in some portion house of the appellant-plaintiff has been constructed. He has also admitted that the appellant-plaintiff is in possession over the portion as shown in the site plan Ex. P1 and denoted by letters A, B, C, D, E,. He also deposed that he is in possession over the land which exists towards the Western side of the property as shown in site plan Ex. PA. He has also admitted that the appellant has raised construction of the wall at point A, B, C in the site plan Ex. P1.”

As per the settled position in law, admission is the best evidence unless retracted or explained. Once Jagtar Singh co-defendant of the appellant has admitted possession of the respondent-plaintiff over the area, detailed in site plan Ex. P1 by denoting it with letters A B C D E, there was no reason for the trial court to reject claim of the respondent-plaintiff for grant of injunction restraining the defendants from interfering in his possession except in due course of law. The courts have not recorded any findings with regard to ownership of the property in question when otherwise in a suit for injunction against interference in possession, the question of ownership may not be relevant or findings on the question of ownership may be incidental and not directly and substantially in issue. In this view of the matter, I do not find an error much less perversity in the judgment passed by the Court in Appeal, warranting interference.

For the foregoing reasons, the appeal fails and is accordingly

dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

4.9.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No