

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

RSA No. 4462 of 2017 (O&M)
Date of decision : July 31, 2018

Charanjit Lal and others

..... Appellants

v.

Jagdish Rai Sood and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. GS Sirphikhi, Advocate
for the appellants.

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing the suit for injunction filed by the respondents.

The admitted facts are that appellant No.1 and respondent No.1 are brothers while appellants No.2 and 3 are sons of appellant No.1. They along with respondents No.2 and 3 were in joint possession of the property situated in Batala. Respondent No.1 had filed a suit stating that he was in established possession of a particular portion as depicted in the site plan as ABCD, and prayed that the appellants be restrained from interfering in his possession or changing the nature of the property. The case of the appellants was that respondent No.1 was not in the established possession of that portion of the property which was claimed by him, and that partition proceedings were pending between the parties in a separate suit.

Both the Courts below held that respondent No.1 had been able

to prove (by preponderance of probability) that he was in possession of the portion claimed by him, and decreed the suit. The lower appellate Court further specified that this decree would be subject to the finalization of the partition proceedings and that is how the appellants are before this Court.

Counsel for the appellants has argued that once respondent No.1 had laid his claim on the basis of site plan, it was incumbent upon him to have examined the draftsman. In this connection, the lower appellate Court has noticed that in his cross-examination, appellant No.1 had accepted 1) that he had not filed or got prepared any site plan which may have been different to the site plan in issue; 2) that he was in possession of five shops as shown in the site plan; 3) that respondents No.2 and 3 were in possession of that portion which was shown in the site plan; and 4) that respondent No.1 was in possession of the portion mentioned in the site plan, though partition proceedings were pending. In view of these admissions by the appellant, the Courts below decreed the suit.

Counsel for the appellants has further argued that merely because the appellants had made certain admissions it would not obliterate the requirement of formally proving the site plan. He has relied upon the decision of this Court in Suraj Mal and another v. Rajender and another, 2014(2) PLR 842 and particularly paragraph 13 thereof to contend that in that case this Court had held that even if there was an admission the need to prove the document would still subsist. Paragraph 13 is quoted herein below :-

“ In support of his case, learned counsel for the appellants has vehemently argued that the Courts below have erred at law while discarding the site plan (Ex.P1) being not proved. It has been argued that the site plan (Ex.P1) was tendered into evidence by the plaintiff Suraj Mal while deposing as PW1 and no objection was raised

on behalf of the respondents to its exhibition at that time and therefore, the same could not have been discarded by the Courts below. Moreover, the title of the appellants stood proved from documents Ex.P2 and Ex.P3. It was further averred that the respondents have not led any evidence to show their title over the property possessed by them. The demarcation report produced on record by the defendants has been given undue weightage. Moreover, once the respondents have admitted existence of a street in the eastern side of their house, as denoted by the appellants in the site plan (Ex.P1), the correctness of the said site plan cannot be disputed and hence, the judgments and decrees of the Courts below being contrary to the evidence on record are perverse and are liable to be set aside.”

In my opinion, the argument raised by the counsel has to fail.

To understand the context of paragraph 13, it would also be necessary to reproduce paragraph 10 which is as under :-

“ Thereafter, the trial Court after considering the evidence on record and hearing counsel for the parties, dismissed the suit, holding that the appellants were not entitled to any relief, as they have failed to prove the site plan (Ex.P1), as the draftsman who prepared the said site plan was not examined and thus, there being no evidence to prove the opening of gate by the defendants in their wall AG and there being no other evidence, the plaintiffs have failed to prove their case. The trial Court further found that the defendants have specifically taken a stand that the door in question was already in existence towards the property of the appellants and in the replication filed on behalf of the appellants, despite pleading specifically that the said door was opened during the pendency of the suit, no effort was made by the appellants to amend their suit and thus, it was held that the defendants were not interfering in the possession of the plaintiffs in any manner and suit was dismissed.”

A perusal of paragraphs 10 and 13, quoted above, would reveal that there the issue was not whether there was a street next to the house but whether the respondent had opened a gate and there was no admission regarding opening of that gate. Here, at the cost of repetition, it may be noticed that the appellants had accepted the position which was shown in the site plan. In the circumstances, I find no reason to interfere with the

judgments of the Courts below and consequently dismiss this appeal.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

July 31, 2018
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No