

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5529 of 2017
Date of Decision: 02.02.2018

Gurbachan Singh Heer and anotherAppellants

Vs.

Surjit Singh HeerRespondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Manjul Sud, Advocate, for the appellants.

RITU BAHRI, J. (ORAL)

The appellants has come up in regular second appeal against the judgment of the trial Court dated 29.11.2013 and learned appellate Court dated 20.03.2017 whereby, his suit for grant of permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiffs over the suit land have been dismissed.

The concurrent findings of the both the Court below are that PW3/Plaintiff No.2 himself admitted that the possession of the defendant over the property in dispute and also that the plaintiffs are not in possession of the suit property. It is further submitted by DW-1 that the suit property is not his self purchased or self acquired property volunteered it is his ancestral property and the suit property falls within the Ward No.6 but he does not want to produce any site plan of the property in dispute. It was further submitted that DW-1 is not having any proof regarding his ownership over the suit property nor he is having any property Number of the disputed shops nor he is having any proof in writing that the shop in dispute has fallen to his lot, because there was no writing, as the same was disclosed by his that the property in dispute has fallen to the lot of his father. In the remaining cross-examination of DW1, it was submitted that he or his father never filed any case that they have not lesser share out of the plot of Salma/PW4 and Naraian nor they have filed any suit that they have got 1 marla and less in the land where they are currently residing. It is further submitted by DW1 that he does not know what is the market value of the shops in dispute. The

defendant got examined DW2, who submitted that DW1 is settled in abroad and the plaintiffs are the uncles of the defendant and further submitted that the father of the defendant was in possession of the suit property and now the defendant along with his brother is in possession of the same comprising the shops in dispute. In the cross-examination of DW2 dated 20.09.2013, it was submitted that he is not a summoned witness and the contents of Ex.DW2/A was not scribed by him, he does not know wherein he has stated that PW4 has got more property than Narayana nor he can read English language and submitted that the shops on the dispute property was earlier out side the abadi area but now the same is extended up to the suit property, which is situated within lal lakeer and the plaintiffs are residing abroad nor any of their family member is residing in the village. Thus DW2 stood the test of his cross-examination anything to support their version.

This finding has been upheld by the learned appellate Court that the property has been 3 marlas which at present has four shops over it. There has been no pleadings to that effect and even no evidence as well as that when said shops were constructed by the defendant during trial of the case. Merely stating so, would not suffice. If the shops were constructed by the respondent during the trial, appellants could have filed any application seeking amendment of the plaint regarding that illegal constructions and seeking its removal and seeking possession, however no such kind of relief could have been taken in alternative by apprehending such thing during trial. There being no evidence led on the record about the date, month and year when the construction of shops were raised by the defendant, coupled with aspect of father of respondent having been in exclusive possession of the suit property after partition as has been stated by PW-5 as well, further coupled with aspect that it was other property which fell to the share of Kartar Singh as he has been stated by PW5 as well, it would amount or lead to only irresistible conclusion that the appellants have not been able to proved on the record firstly their exclusive possession over the suit property and even their right over the said property, specially PW-3 plaintiffs himself stated that at the time of filing of the suit, respondent was in possession of the entire suit property. Now if the respondent was in possession of the entire suit property at the time of filing of the suit, filing of suit simpliciter for permanent

injunction would not be maintainable if the appellants claimed the suit property to be belonging to them exclusively after partition as in that eventuality proper remedy was to file suit for possession of the suit property. So for the reasons as above, when the parties were aware of the decree and larger issue in controversy regarding the possession and right over the suit property and when both the parties even led evidence as well, non framing of issue regarding alternative relief would not cause any prejudice and would not thus be material enough as the appellants have failed to prove on record their possession over the same and also their legal right over the suit property to claim its possession.

So in view of the above, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

02.02.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No