

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

RSA No.6001 of 2017(O&M)

Date of decision: 31.8.2018

Banarsi Dass

....Appellant

VERSUS

Ram Asra (since deceased) through his LRs and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Sharma, Advocate for the appellant.

REKHA MITTAL, J.(Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the defendants including the appellant from dispossessing qua property measuring about 8 marlas shown red in the site plan, situated within the lal lakir of village Randhawa Massandan, Tehsil and District Jalandhar was decreed by the trial Court vide judgment and decree dated 15.02.2014 and the appeal preferred by unsuccessful defendant/appellant came to be dismissed by the Additional District Judge, Jalandhar whereby findings recorded by the trial Court were affirmed.

The sole submission made by counsel for the appellant is that as per plea of the respondent/plaintiff, suit property is situated within Lal lakir of village Randhawa Massandan but the appellant had stated that the suit property is part of khasra No.1578. It is further argued that the respondent/plaintiff in his cross examination had stated that he is not holding any title deed of the property in dispute. He has no concern with

property comprising khasra No.1578. He is in possession of property comprising khasra No.1578. The property in dispute falls in khasra No.1578. In the later part of his cross examination, he has admitted the factum of compromise vide writing dated 27.02.2011 between him and the appellant whereby the appellant agreed to pay a sum of Rs.1,50,000/- to him for raising intervening wall in the half portion from both sides of the property in dispute. It is vehemently argued that as the appellant is one of the co-owners of the property, the respondent/plaintiff is not entitled to seek injunction against his co-owner.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

Indisputably, the respondent/plaintiff filed a suit for injunction to protect his possession of property measuring about 8 marlas shown red in the site plan attached. Though the appellant has raised a plea that the property in dispute is part of khasra No.1578 and the said fact has also been admitted by the respondent/plaintiff in his cross examination but there is no evidence produced on record that as the property is part of khasra No.1578 so the same is not part of abadi deh.

The primary dispute in the present case is with regard to possession of the suit property because in a suit for injunction, ordinarily the Court need not to go into the question of ownership of the suit land. The plea of respondent/plaintiff to be in possession of the suit house stands admitted by the appellant as well as Mangat Ram DW-1 in unequivocal terms in the light of facts elicited in their cross examination and reproduced in para 16 of the judgment passed by the Court in appeal. Counsel for the appellant has not disputed correctness of the facts recorded in bold letters in para 16 of the judgment of Court in appeal, sufficient to

establish plea of the respondent/plaintiff that he is in possession of the suit house to the exclusion of appellant Banarsi Dass who is NRI being resident of U.K., therefore, there is no error much less perversity in the judgments, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

AUGUST 31, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no