

RSA-2887-1988 (O&M)

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

RSA-2887-1988 (O&M)

Date of decision : 11.04.2019

Kuldeep Singh and others

... Appellants

Versus

Hardial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.G. Chaudhary, Advocate
for the appellants.

Mr. R.L. Batta, Senior Advocate with
Mr. Mandeep K. Sajjan, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the respondents-plaintiffs for injunction seeking restraint against the appellants-defendants from forcible dispossession and interference into possession, though dismissed by the trial Court, has been decreed.

The plaintiffs sought the injunction, aforementioned, in respect of a land measuring $\frac{1}{2}$ bigha, situated in the Village Kakrala, by giving the descriptions, who had been enjoying the possession since their forefather. The aforesaid land, according to the averments in the plaint, was situated in Lal Lakir of Village Kakrala. When the defendants threatened to dispossess the plaintiffs, resulting into accrual of cause of action to file the suit.

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The defendants filed the joint written statement and alleged that the plaintiffs wanted to encroach upon the plot of defendant No.2. The boundaries of the suit property were not correct and denied to have extended any threat.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether forefather of the plaintiff were in possession of the vacant land measuring about ½ bighas as detailed in para No.1 of the plaint as owners? OPP*
- 2. Whether the plaintiffs are in possession of the suit land as exclusive owner after the death of their forefathers? OPP*
- 3. Whether the defendants threatened to dispossess the plaintiffs from the suit land illegally and forcibly? OPP*
- 4. Whether the defendants also threatened to raise construction over the suit land without any right or title/ OPP*
- 5. Whether the suit is not maintainable in the present form as alleged? OPD*
- 6. Whether the defendants are entitled to special costs? OPD*
- 7. Relief.*

Additional issue framed on 20.03.1987:

6-A Whether the report of Local Commissioner is liable to be set aside on the allegations made in the application? OPA

Both the parties led extensive evidence in support of their respective cases.

During the course of hearing of the suit, Local Commissioner was appointed, who submitted his report dated 24.09.1986, which was objected to by the plaintiffs.

The trial Court on the basis of the evidence brought on record dismissed the suit, but the lower Appellate Court, in appeal, reversed.

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Mr. K.G. Chaudhary, learned counsel appearing on behalf of the appellants-defendants submitted that the judgment and decree of the lower Appellate Court is totally contrary to the report of the Local Commissioner as the plaintiffs have failed to prove their possession, on the contrary the defendants had been in possession of the property. The documents Ex.PA to Ex.PD do not relate to the suit property. No documentary evidence has been placed on record except bald testimony, thus, urges this Court for setting aside the judgment and decree, under challenge.

Mr. R.L. Batta, learned Senior Counsel assisted by Mr. Mandeep K. Sajjan, learned counsel appearing on behalf of the respondents submitted that there is no illegality and perversity in the judgment and decree of the lower Appellate Court as the testimony of PW1-Bhupinder Singh Sidhu, Draftsman, established on record that he had not prepared the site plan, but it was on inspection of the spot. The plaintiff was found to be in possession of the site, in dispute, shown as letters ABCDEF, whereupon, he stored his fuel woods, dung-cakes and also tethered cattle. The door of the house of Hardial Singh opened in the suit property, thus, urges this Court for dismissal of the present regular second appeal by upholding the judgment and decree, under challenge.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Chaudhary, much less, consideration of any Substantial Question of Law.

The suit as set up by the respondents-plaintiffs was simpliciter for injunction without any title. In order to succeed in the said suit, the

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essential ingredients are long and settled possession. As per the evidence brought on record, it was found that house of the defendants, was at a distance of 500 yards from the property, in dispute. The respective witnesses and neighbours of the plaintiffs proved that the plaintiff-Hardial Singh was in exclusive possession of the suit land and used to tether his cattle. Gurdwara property adjoined to their property and door of the house opened towards the suit property, much less, the factum of storing of fuel woods and dung-cakes. The lower Appellate Court rightly discarded the report of the Local Commissioner simply on the ground that K.K. Singhi, Advocate, was the close-friend of Rattanjit Singh/defendant No.2, for, he had, for inspection, gone in the car of Rattanjit Singh. The trial Court also rightly discarded the statement of PW1-Bhupinder Singh Sidhu, Draftsman, as it has not come on record that site plan prepared was after inspection of the site at spot. In my view, the lower Appellate Court, being the last Court of fact and law, after appreciating the evidence brought on record, correctly decreed the suit.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Chaudhary, to form a different opinion than the one already arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground is made out for interference. Resultantly, the second appeal is dismissed.

11.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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