

In the High Court of Punjab and Haryana at Chandigarh

**RSA-4394 of 2019 (O&M)
Date of Decision:7.11.2019**

Shri Bhagwan and others

---Appellants

vs.

Hawa Singh (deceased) through Lrs and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. A.K.Khubbar, Advocate
for the appellants

Rekha Mittal, J.
CM No. 12314-C of 2019

Prayer in this application is for condoning delay of 83 days in
refiling the appeal.

Heard.

Allowed as prayed for. Delay of 83 days in refiling the appeal
stands condoned.

Main case

Challenge in the present appeal has been directed against
concurrent findings recorded by the courts whereby suit for permanent
injunction restraining the defendants-appellants from ousting the plaintiffs
from exclusive possession of suit land, described in paras 1 and 3 of the
plaint, was decreed by the trial court vide judgment and decree dated
31.8.2016 that came to be affirmed in appeal by the Additional District
Judge, Jhajjar vide judgment and decree dated 22.1.2019.

Counsel for the appellants would argue that findings of the

courts that respondents-plaintiffs are in possession of the suit land are the result of misreading of evidence particularly the facts elicited in cross examination of Hawa Singh respondent-plaintiff No. 1. It is vehemently argued that Hawa Singh was confronted with photographs Mark 'A' to 'I'. He had stated that he did not know if tractor shown in photograph Mark 'A' is of Bhalle son of Gugan. He did not know about ownership of buffaloes shown in photographs Mark 'A', 'C' and 'E'. He did not know about room, tractor, cattle and persons shown in photographs Mark 'A' to 'I'.

I have heard counsel for the appellants and perused the paper book particularly the judgments impugned.

Before adverting to the submissions made by counsel, it is pertinent to note that concurrent findings of fact cannot be interfered with unless it suffer from perversity or a question of law emerges that needs determination in second appeal. Equally true is that concurrent factual findings cannot be set aside merely because a different view is possible on re-appreciation of evidence.

Counsel has tried to derive some advantage from photographs Mark 'A' to 'I' put to Hawa Singh-plaintiff No. 1 in his cross examination. Firstly, these photographs were only marked in testimony of Hawa Singh as he never admitted correctness of the photographs. Secondly, the factum of possession cannot be decided on the basis of something clicked/caught in photographs. This court cannot overlook that with the latest technology, photograph can depict totally different situation vis-a-vis ground reality. Even otherwise, Hawa Singh has never admitted that any thing shown in the photographs actually belongs to defendants-appellants. In this view of

the matter, contention raised by relying upon aforesaid facts is not
sufficient to interfere in consistent factual findings.

For the foregoing reasons, finding no merit, the appeal fails and
is accordingly dismissed in limine.

(Rekha Mittal)
Judge

7.11.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No