

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

109

RSA-1913-2016(O & M)

Date of Decision:13.03.2019

Gian Singh

....appellant

Versus

Nirmal Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rahul Sharma-I, Advocate
for the appellant

AMIT RAWAL, J. (ORAL):

The present Regular Second Appeal is directed against the concurrent findings of facts whereby the plaintiff has not been successful in claiming permanent injunction against the defendants from encroachment and interference over the portion of courtyard ABCK measuring 25' x 22' as shown in the site plan on the premise that the aforementioned site was earlier owned by Mastan Singh son of Harman Singh-father of the plaintiff and Southern portion was owned by Pritpal Singh. Whereas, ABCDEFGH was owned and possessed by the plaintiff, wherein he had constructed several rooms. However, the portion ABCK was the front courtyard of the house and the door and window in the wall KC of the house of the plaintiff opened in the front courtyard which was lying open. The defendants did not have any property nearby or in the vicinity. The plaintiff being the exclusive owner in possession had been parking his vehicle in the front courtyard. The defendants forcibly intended to occupy the portion ABCK without any right, thus, the cause of action arose for the plaintiff to file the

suit.

The defendants opposed the suit by denying the existence of boundary wall or fencing around the said site and clarified that the said site was being used by the defendants for storing manure heap and for other subservient agriculture purposes. The site shown as Tobba towards the west of side AK which was also part of the Bara owned and possessed by the defendants. The reliance was also placed on sale deed dated 11.08.1981.

The plaintiff in support of his evidence examined three witnesses and brought on record the site plan as Ex.P1 and certified copy of old site plan as Ex.P2. The plaintiff also tendered into evidence Ex.P3 to Ex.P7. One of the defendants namely Mohinder Singh stepped into witness box as DW1 and brought on record Ex.DW1/A.

Mr.Rahul Sharma, Advocate, learned counsel appearing on behalf of the appellant submitted that all the three witnesses who have been examined had been consistent with regard to the existence of the house. PW3 also deposed that he had no other access through open courtyard towards his house, which was taken on rent. The defendants being influential persons forcibly tried to occupy the land which has been managed with great difficulty. The sale deed relied upon has not seen the light of the day and therefore there was no defence viz-a viz the evidence of the plaintiff.

I have heard learned counsel for the appellant and perused the paper book.

The photographs, shown during the course of the hearing, do not reflect that open area was ever used as a path or bounded by any boundary wall. If the area having the grass giving path, the growth of grass

is always affected, which is not decipherable from the photographs.

No doubt, the defendants have also not been able to establish their possession. In the absence of any defence, the relief cannot be granted in case the plaintiff fails to discharge the onus as per Section 101 of the Indian Evidence Act. Even if the land is still lying in Lal Lakir, plaintiff is obliged to place on record certain documents like the Rapat or the girdawri, site plan or the Akshjara, regarding the ownership and possession if any, to connect the suit property.

The findings of fact and law, thus, cannot be said to be suffering from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

March 13, 2019
neenu

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No