

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

RSA No.5001 of 2016 (O&M)

Date of decision:18.3.2019

Dharam Singh Dhillon

... Appellant(s)

Vs.

Barkha Ram and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. V.K.Jain, Senior Advocate with
Mr. Ravi Kadian, Advocate
for the appellant.**

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff for declaration to be owner in possession of the site shown as ABCD in the site plan and for mandatory injunction directing the defendants to remove the constructions already constructed in the site in dispute, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that plaintiff, his mother and brother owned 45 bighas of land and was in possession of the land since the time of their ancestors. An attempt was made to dispossess the plaintiff, thus, cause of action arose to file the suit for injunction. During the pendency of the earlier suit, defendants removed the ruri from the site and constructed one room over the same shown as AEFG in the site plan. The said suit was dismissed vide judgment and decree dated 11.2.2000 and appellant was permitted to

file a fresh suit on the same cause of action.

DDR No.25 dated 17.12.1991 was lodged by the wife of the plaintiff wherein compromise was arrived and the plaintiff had undertaken to remove the ruri without any compensation, thus, aforementioned fact established the possession of the plaintiff.

During the pendency of the appeal, when permission was granted, the defendants further encroached upon the site in dispute and constructed a shop in the land as well as passage towards the southern side marked as GFHIJD in the site plan.

The defendants opposed the suit and raised objection qua maintainability and dismissal of the previous suit. On merit, it was asserted that plaintiff had no concern with the suit land as he was resident of village Kheri whereas defendants had been owner in possession of the land since the time of their forefathers. DDR resulted into submission of false contents.

Mr.V.K.Jain, learned Senior counsel assisted by Mr. Ravi Kadian, Advocate appearing on behalf of the appellant submitted that in order to prove the aforementioned facts, the plaintiff examined nine witnesses and brought on record documents, Ex.P1 to Ex.P41. The defendants though also examined the witnesses but failed to disbelieve and controvert the unimpeachable evidence referred to above. The report of the Local Commissioner was also in favour of the plaintiff.

I am afraid the aforementioned arguments are not sustainable in the eyes of law, for, the plaintiff had not been able to prove the possession of the suit property, nor the witnesses deposed in the same manner. In such

circumstances, simpliciter relief of declaration in the absence of possession was required to be incorporated but the same was not incorporated despite the permission granted to file a fresh suit on the same cause of action.

As an upshot of my findings, arguments of Mr. Jain, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 18, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No