

RSA-6767-2016 (O&M)

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

RSA-6767-2016 (O&M)

Date of decision : 13.02.2019

Santosh (deceased) through LR's and another

... Appellants

Versus

Rati Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Nikunj Dhawan, Advocate for
Mr. M.S. Khillan, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM- 17651-C-2016

For the reasons stated in the application, the delay of 87 in
filing the appeal is condoned.

CM stands disposed of.

CM- 17652-C-2016

For the reasons stated in the application, the legal
representative of the appellant is ordered to be brought on record for the
purpose of prosecuting the appeal.

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The appellants-plaintiffs are aggrieved of the judgment and
decree of the lower Appellate Court, whereby the suit for permanent
injunction, decreed by the trial Court, has been dismissed.

It was alleged that the father of plaintiff No.1, in the year 1976
i.e. 09.06.1976, was allotted a plot measuring 3 marlas, wherein he planted
three trees of Dek and one tree of Jamun and installed khore for their

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animals and hodi and a toka machine. When the defendant wanted to encroach upon the plot, a cause of action arose to file the suit.

The defendant opposed the suit and stated that the plaintiffs did not mention any rectangle or killa number, alleged to have been allotted nor any particulars of revenue record were given. It was explained that the property marked as 'ABCD' in the site plan attached with the written statement was in possession of their forefather and there was also a water connection in the name of the defendant.

The plaintiffs in support of their case examined four witnesses and brought on record Ex.P1 allotment letter and Ex.P2 site plan. On the other hand, the defendant examined six witnesses and brought on record number of documents.

On the preponderance of evidence, the trial Court decreed the suit, but the lower Appellate Court accepted the appeal preferred by the defendant, in essence, the suit was dismissed.

Mr. Nikunj Dhawan, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the alleged admission noticed by the lower Appellate Court qua possession of the suit property, in fact, was during the pendency of the suit and not before. The report of the Local Commissioner cannot be taken into consideration viz-a-viz the revenue record and the allotment letter. The site plan (Ex.P2) also established the possession was in tandem with the allotment letter. As per the revenue record, old constructed room and verandah of cattle, grass cutting machine, water tap etc., shown to be in possession of the plaintiffs, therefore, the lower Appellate Court committed illegality and perversity in reversing the well reasoned judgment and decree of the trial Court.

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I have heard learned counsel for the appellants-plaintiffs, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Dhawan, for, the allotment letter did not give the description of killa and rectangle number, thus, the identity of the property was not established. The plaintiffs admitted that electricity had been drawing from his brother's meter and even, water connection was not in his name, his residence was also at a distance of far away from the place. In cross-examination, he admitted the possession of the defendant, but came out with a plea that it was during the pendency of the suit.

This Court cannot remain unmindful of the fact that the suit was filed on 03.12.2009 and Local Commissioner visited the spot on 21.12.2009 and gave the report that it was in possession of the defendant and not of the plaintiffs. The status quo order was passed on 22.03.2012. No such application on behalf of the plaintiffs was moved to bring all these factors.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Dhawan, 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 for interference is made out. Resultantly, the present second appeal is dismissed.

13.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**