

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

SAO No. 5 of 2016 (O&M)

Date of Decision: January 07, 2019

Des Raj and others

.....APPELLANTS

VERSUS

Shri Mahant Anchal Gir and another

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. C.B. Goel, Advocate
for the respondents.

SURINDER GUPTA, J.(Oral)

Heard.

The plaintiffs/appellants filed suit seeking relief of decree for declaration that they have become owners of the suit land with consequential relief of injunction restraining defendants from dispossessing the plaintiffs from the suit land in an illegal and forcible manner.

On issue of possession of plaintiffs over the suit land, learned trial Court recorded the findings in para 19 of its judgment as follows:-

I have duly considered the rival submissions advanced by ld. Counsel for both the parties and have gone through entire evidence produced by the parties. Plaintiff has taken stand that they are in continuous, peaceful possession of the suit property and thus have perfected their title by way of adverse possession. To prove their possession plaintiff have relied upon the demarcation report Ex. P2 which shows that plaintiff are in

possession of the suit property. Moreover the defendants have also admitted the possession of the plaintiffs over the suit land.

Even while recording findings on issue No.2 as to “whether plaintiffs are in possession of the suit land” it was observed that in view of admission of the defendants that possession of the suit land is with the plaintiffs, “defendants will take possession from the plaintiffs in due course of law”.

Against dismissal of the suit, plaintiffs filed appeal. Learned Ist Appellate Court has observed that Civil Court has no jurisdiction to decide title of the parties and proper course for the Court is to return the plaint. As the suit is not maintainable before the Civil Court, the plaint was ordered to be returned for presentation before appropriate authorities. However, on the question of relief of injunction as sought by the plaintiffs in view of the admission of their possession over the suit land, no findings were recorded.

The short question which has been raised by learned counsel for the appellants is that the Ist Appellate Court could segregate relief claimed by the plaintiffs and record separate findings on the issues of possession of plaintiff over suit land. So far as the order to return the plaint for determination of title of the plaintiffs over the suit land is concerned, they are not aggrieved but regarding the relief of injunction as sought by him, no order has been passed by the Ist Appellate Court.

The possession of plaintiff over the suit property is admitted by the defendants and in view of the submissions of learned counsel for the defendants/respondents before the trial Court that defendants will not take possession except in due course of law, the plaintiffs/appellants appear to

have felt satisfied and did not raise this plea in grounds of appeal before Ist Appellate Court. It appears that this appeal has been filed just to keep the litigation pending. As the plea of denial of relief of injunction by trial Court was not specifically raised, the Ist Appellate Court was not required to record the findings on this score.

Keeping in view of the above facts, I find no reason to interfere with the findings of the Ist Appellate Court.

This appeal has no merits.

Dismissed.

January 07, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*