

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4571 of 2017 (O&M)

Date of Decision: February 25, 2019

Jasmer

...Appellant

Versus

Baljeet & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Diwan S. Adlakha, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.2786-C of 2019

For the reasons mentioned in the application, which is supported by an affidavit, the order dated 21.01.2019 dismissing the appeal for non-prosecution is hereby recalled and the appeal is restored to its original number.

CM stands disposed of.

CM No.13607-C of 2018

Report of the Local Commissioner Ex.A3 is taken on record.
Exemption is also granted from filing certified copy of the same.

CM stands allowed.

CM No.11944-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 2 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.4571 of 2017

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the judgment and decree of the trial Court decreeing the suit in toto granting injunction in favour of the plaintiff and against the defendants for forcible interference, has been set-aside.

Plaintiff sought the injunction in respect of the entire piece of land subject matter of the suit on the premise that he had been in long and settled possession of the suit property and placed on record documents Ex.P6 to Ex.P11, i.e., assessment register, original house tax receipt, original electricity bill and alleged to have raised construction of one room and kitchen in the house. It was alleged that the defendants, being inimical towards the plaintiff, created obstruction, which gave cause of action to the plaintiff to file the suit.

Defendant Nos.1, 2, 6, 7, 8 & 10 filed a joint written statement and opposed the suit, much less the site plan. Defendant No.9 filed a separate written statement and also opposed the suit. Possession of the entire property, in essence, was disputed. Defendants brought on record site plans Ex.D1 and Ex.D2.

During the pendency of the suit, even the Local Commissioner was also appointed. The trial Court by noticing the entire evidence decreed the suit and enjoined the defendants, as noticed above, but the Lower Appellate Court upheld the decree except 172 sq.feet, which, according to the report of the Local Commissioner, was found to be in possession of the defendants.

Mr. Diwan S. Adlakha, learned counsel for the appellant-plaintiff submitted that the report of the Local Commissioner is neither conclusive nor carries any presumption of correctness in view of the ratio decidendi culled out in **Fauja Singh Versus Resham Singh and others, 2011(1) PLR 265**, though the Local Commissioner had inspected the spot in the presence of the parties. Tethering of the cattle does not establish conclusive and conscious possession.

I am afraid, the aforementioned argument is not sustainable as the plaintiff did not cross-examine the witness and the report, as per the provisions of Rule 10(2) of Order 26 CPC, is admissible. Plaintiff did not avail the remedy as provided under the aforementioned provisions by cross-examining the witness. For the sake of brevity, sub-rule (2) of Rule 10 of Order 26 CPC read thus:-

“10(2) Report and depositions to be evidence in suit—The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the court or, with the permission of the court, any of the parties to the suit may examine the Commissioner personally in open court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.”

The judgment cited supra does not deal with the statutory provisions of law. Moreover, it was a case of joint possession. However, the instant case is only with regard to the forcible interference qua possession. The Lower Appellate Court modified the decree as per the report of the Local Commissioner which has gone un rebutted.

For the reasons mentioned above, I do not find any illegality or

perversity in the findings of the Lower Appellate Court. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 25, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No