

RSA-4271-2018 (O&M)

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

RSA-4271-2018 (O&M)
Date of decision : 03.04.2019

Kewal Krishan

... Appellant

Versus

Ramesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arvind Kashyap, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-11388-C-2018

For the reasons stated in the application, which is supported by
an affidavit, delay of 6 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The present regular second appeal is directed against the
judgment and decree of the lower Appellate Court, whereby the suit of the
respondents-plaintiffs for injunction, dismissed by the trial Court, has been
decreed.

The plaintiffs sought the injunction seeking restraint against the
appellant-defendant or his servants, in respect of the following parcels of
land:-

*"Khewat No.100/100 Khatauni No.216, Khasra No.825 (0-3),
Khewat No.108-108, Khatauni No.225, Khasra No.829 (0-1),*

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Khewat No.109-110, Khatauni No.227, Khasra No.830 (0-1), Khewat No.110-11, Khatauni No.229, Khasra No.831 (0-3) and Khewat No.112-114 Khatauni No.232 Khasra No.832 (0-1) situated in village Bhanguri Teeka Sudrerh Hadbast No.415, Tehsil Dharkalan District Pathankot as detailed in the jamabandi for the years 2012-13."

When the defendant extended the treat of forcible dispossession, a cause of action accrued to file the suit.

The defendant opposed the suit by asserting the concealment of material facts and stated that neither Kanshi Ram nor the plaintiffs were in possession of the suit property. It was the defendant, who was the owner in possession.

The plaintiffs in support of the pleadings examined two witnesses and brought on record Ex.P1 to Ex.P3, whereas the defendant examined himself as DW1 and brought on record Ex.D1 to Ex.D5.

The trial Court, on the basis of the evidence brought on record, non-suited the plaintiffs on account of not having produced the site plan, but the lower Appellate Court has erroneously reversed the findings.

Mr. Arvind Kashyap, learned counsel for the appellant-defendant submitted that the entire onus was fastened upon the appellant-defendant of not proving the site plan, whereas in the cases of injunction, it is the plaintiff, who has to prove the long and settled possession. Since the suit land is situated in *abadi deh* and does not have any khasra number, the identity of the property was in dispute. The jamabandi only pertained to the khasra numbers, but did not establish the nature and character of the land as *gair mumkin abadi*, thus, urges this Court for setting aside the judgment and decree of the lower Appellate Court.

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

Copy of the jamabandi, produced by Mr. Kashyap, during the course of the hearing, shows that all the khasra numbers reflecting in column No.7 as *gair mumkin abadi*. That was a clincher for the lower Appellate Court to protect the possession as the plaintiffs have not asserted any right as owner. Column No.4 of the jamabandi also reflected the possession, whereas no such evidence has been placed on record to belie the case of the plaintiffs regarding the identity of the property.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination. No ground is made out for determination. Accordingly, the second appeal is dismissed.

03.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**