

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

RSA No.5100 of 2017 (O&M)

Date of decision:05.04.2019

Prem

... Appellant

Vs.

Joginder and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rahul Deswal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.13548-C of 2017

Deficiency of the court fee has been made good.

Application stands allowed.

C.M.No.13549-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 03 days in filing the appeal is condoned.

Application stands allowed.

C.M.No.13550-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 331 days in re-filing the appeal is condoned.

Application stands allowed.

RSA No.5100 of 2017 (O&M)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff seeking restraint against the defendants against extension of threat of forcible interference and dispossession in respect of plot measuring 798 square yards having following boundaries, has been dismissed:-

East : Gali

West : Plot of Shri Suba Singh son of Jagan

North : Gali and then plot of Motu son of Mauji

South : Gali and Hawa Singh son of Supra

It was alleged that on the basis of the family settlement dated 12.09.2005, half share of the suit property fell to the share of plaintiff no.1 and his brothers and have become owners in possession of the suit property in equal shares. They had been using the suit property for their own purposes.

Defendants no.1 to 3 and 8 appeared and filed the joint written statement raising the objection qua res judicata, locus standi and limitation. It was averred that one Hari Singh, ancestor of the defendants had filed the civil suit no.556 of 1993 titled as "Hari Singh vs. Ram Singh", in respect of same suit property against the ancestor of plaintiffs namely Jagdish son of Ram who was uncle of plaintiff no.1 and brother of father in law of plaintiff no.2 which was dismissed on 22.12.1997 but in appeal, vide judgment and decree dated 19.5.1998, it was decreed in favour of the ancestor of the defendants. The ancestors of plaintiff filed an appeal before this Court

bearing no.2262 of 1988 which was decided vide order dated 16.12.1998 wherein the defendants were held to be in possession of the suit property.

It was also averred that one Sheo Lal (Shiv Lal) was not owner in possession of the suit property, instead Hari Singh son of Piru ancestor of the defendants was owner in possession of the suit property which was of 985 square yards and gave the description of the property as under:-

“East : Vacant land of Gram Panchayat,
West : Gali-Sareaam and plot of Jagdish etc.
North : Vacant land of Gram Panchayat and cremation ground
South : Passage/rasta and plots of others.”

The plaintiff in support of the pleadings examined six witnesses and brought on record the site plan Ex.P1. On the other hand, defendants examined three witnesses and brought on record. Ex.D1 to Ex.D20.

Mr. Rahul Deswal, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have abdicated in non-suiting the plaintiff by not referring to the admission of the defendants in evidence regarding area and as well as description of the plot. Even if it is a vacant plot, there was no necessity to obtain the assistance of the Local Commissioner as it could not have established the possession.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Deswal.

In a suit for injunction qua forcible interference and dispossession, long and settled possession is sine-qua-non which plaintiff has miserably failed to discharge as per the provisions of Section 101 of Indian Evidence Act. Even if it is in *abadi deh*, evidence which was lacking was demarcation in accordance with the site plan to be placed on record. Assuming, even if the defendants had not contested, suit was not for title, and therefore identity of the property in area was consequential.

As an upshot of my findings, arguments of Mr. Rahul Deswal, 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

April 05, 2019
savita

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