

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

RSA No. 4835 of 2018 (O&M)
Date of Decision: 30.04.2019

.....Appellant

....Respondents

Present: Mr. Mohammad Arshad, Advocate
for the appellant.

[1]. Plaintiff/appellant is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for possession of plot measuring 7½ Marlas as shown in red colour marked by the letters 'ABCDEF' in the site plan attached with the plaint.

[2]. Plaintiff filed the suit on the ground that the plaintiff is owner of the suit property and the defendant has no right, title or interest to remain in possession of the suit property. Defendant has encroached upon the land by taking undue advantage of absence of the plaintiff about three years prior to filing of the suit.

[3]. Defendants contested the suit by denying the title in favour of the plaintiff and claimed that defendants are lawful

owners and in exclusive possession of the suit property since long.

[4]. Both the parties went to trial on the definite issues as framed by the trial Court.

[5]. The suit was dismissed qua defendants No.2 and 3 under Order 9 Rule 2 CPC.

[6]. Plaintiff got examined Mehmood Ali as PW-1 and after tendering documents Ex.P-1 to Ex.P-4 closed the evidence. On the other hand, defendants got examined defendant No.1 as DW-1. Defendant No.4 was examined as DW-2. After tendering their affidavits, the evidence of the defendants was also closed.

[7]. It is a settled principle of law that plaintiff has to stand on its own legs in proving its case. PW-1 Mehmood Ali in his cross-examination pleaded ignorance about period of possession of the defendants over the suit property. He stated that the possession of the defendants must have started from the year 1947. He also pleaded ignorance about the exact area possessed by the defendants. There was no date, time, month or year available with the plaintiff when the defendants had taken illegal possession of the suit property.

[8]. As per the site plan adduced by the plaintiff, the plaintiff sought possession of 7½ Marlas of property situated in village Khokhar Dawakhri. Even PW-1 Mehmood Ali also stated in the

context of land situated in village Khokhar Dawakhri, where the defendants have taken illegal possession of the same. PW-1 Mehmood Ali relied upon site plan Ex.P-3 in his examination-in-chief. Perusal of the document Ex.P-3 would show that the same relate to village Raju Dawakhi. The contradiction in terms of name of the village i.e. Khokar Dawakhri and Raju Dawakhi would go in a long way to show that the plaintiff was not sure about the location of the property.

[9]. In the examination-in-chief of PW-1, possession of the defendants was alleged to be three years prior to the date of filing of the suit. The witness was cross-examined on 26.07.2017 and the date of illegal possession would necessarily fall back the the months of July 2014. The suit itself was filed on 15.02.2014 and on this falsehood in the pleadings and evidence of the plaintiff could be noticed. From the date of filing of the suit, illegal possession of the defendants would come up around the year 2009, but no such case was set up by the plaintiff. Even in the cross-examination of PW-1, the illegal possession of the defendants over the 10 Marlas of land was taken in the year 1947. The glaring discrepancies in the case of the plaintiff were noticed by the Courts below to hold that the plaintiff has not brought on record any such cogent evidence on which reliance can be placed by the Courts.

[10]. The civil cases are to be decided on the basis of preponderance of probability. The plaintiff has miserably failed to adduce any evidence in support of its case. The evidence produced by the plaintiff is discrepant enough to discard the version outrightly. The findings recorded by the Courts below could not be shown to be perverse or the result of any misreading of evidence. No question of law worth consideration is involved in the present appeal. The same is accordingly dismissed in *limine*. All pending civil misc. applications are disposed of accordingly.

April 30, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No