

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

RSA No.2443 of 2018(O&M)

Date of decision: 29.10.2019

Ram Rattan

... Appellant

Versus

Charan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Pardeep Goyal, Advocate, and
Mr. Abhishek Goyal, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 21.12.2015, and as even the appeal preferred against the said decree failed and was dismissed on 15.07.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a decree for injunction, claiming himself to be owner in possession of GOBAR KHAD GADDA, marked with letters ABCD, shown in red colour in the site plan appended with the plaint, situated within the Lal Dora and abadi of Village Shamsabad, Tehsil and District Palwal.

In brief, the case set out by the plaintiff was that his forefathers were in possession of the suit property from the last 50-60 years and thereafter plaintiff had filled the plinths many years ago, and since then he

has been using the same openly, peacefully and uninterruptedly. But for the defendants sought to interfere in his peaceful possession, thus, the suit.

In the written statement filed by the defendants, ownership as also possession of the plaintiff was denied. Rather defendants claimed themselves to be owner in possession of the suit property. It was maintained that plaintiff, who happened to be an Ex. M.L.A., was a land grabber. In fact, defendants had raised the boundary wall around the suit property, which was purchased by their father from Smt. Ram Dulari and was being used as *Gitwar* for storing fire-woods etc. Even earlier, wife of the plaintiff had filed a suit seeking injunction against the father of the defendants qua the suit property, i.e., Civil Suit No.15 of 1986, which was dismissed in default vide order dated 19.10.1987. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded for the plaintiff to succeed he was required to prove his possession over the suit property, whereas he failed to lead any cogent evidence in this regard. Though the present suit was for injunction simplicitor, but the plaintiff had also set up a title in himself qua the suit land. However, again he failed to lead any evidence even to prove his ownership. The witnesses examined by the plaintiff i.e. Bhim Singh (PW1), Roop Chand (PW4), and the plaintiff himself, though deposed that plaintiff was in possession of the suit property, but in the absence of any documentary or other cogent evidence, he could not be held to be in possession. In fact, Sukhram (DW1), Rampal (DW2), examined by the defendants duly controverted the statements of the witnesses examined by the plaintiff. As per site plan (Ex.P1), plot of Sukhram (DW1) was on the

southern side, and shop of Rampal (DW2) and his brother Nanak was on the western side of the suit property, and they both testified in their deposition the ownership and possession of the defendants upon the suit property. Although the site in dispute was admittedly within the Lal Dora and a part of abadi deh, but still the onus to prove possession over the suit property was always upon the plaintiff, which he failed to discharge. That being so, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed for lack of evidence.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

29.10.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO