

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

RSA 1131 of 1999 (O&M)

Date of Decision: January 13, 2020

Gulzar Singh through his Lrs. ...Appellants

Versus

Raghubir Singh and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Shiv Kumar, Advocate
for the appellants.

Mr. R.S. Dadwal, Advocate
for the respondents.

FATEH DEEP SINGH, J. (Oral)

After a ding dong battle between the parties to this regular second appeal firstly in the Court of learned Additional Civil Judge (Senior Division), Kharar, who vide judgment and decree dated 02.08.1997 decreed the suit of the appellant/plaintiff Gulzar Singh and, subsequent, appeal by respondents Raghubir Singh and others, the Court of learned Additional District Judge through the impugned findings dated 19.03.1999 allowed the appeal and set-aside the judgment of the trial Court. It is, thereafter, plaintiff/appellant Gulzar Singh

has come in this appeal.

Appellant/plaintiff Gulzar Singh filed a suit claiming that he is owner of the property detailed in the head note of the plaint comprising of a plot detailed therein situated within abadi of village Tangari, Tehsil Kharar, District Ropar, wherein, he has been stocking cow dung cakes, fodder, manure heaps etc. since many years and threatened over the acts of the respondents/defendants Raghbir Singh, Balbir Singh and Dalbir Singh sought a decree of permanent injunction restraining the respondents/defendants from interfering and dispossessing him from the property in question.

The respondents/defendants staked their claim on the ground that plaintiff was neither owner nor in possession of the suit land which vests in the answering defendants. The respondents/defendants had denied the possession of the plaintiff and rather claimed it otherwise that the plaintiff was trying to oust them through illegal means and, hence, sought dismissal of the suit.

The replication of the plaintiff reiterated the stand on behalf of the plaintiff.

The Court below framed the following issues:-

1. Whether the plaintiff is entitled to relief of permanent injunction as alleged? OPP
2. Relief.

To prove his case, plaintiff himself appeared into the witness box as PW1 and sought corroboration from the testimonies of PW2-Kirpal Singh, PW3-Tara Singh and PW4 Bhupinder Singh and after tendering the report of Local Commissioner Ex.PC alongwith site plan Ex. PD, closed the evidence.

On behalf of the defendants, Gurdev Singh testified as DW1, Prem Singh as DW2, Madan Lal as DW3 and Raghbir Singh as DW4 and after tendering copy of the FIR Ex.PD1 closed the evidence.

As a epilogue, the findings as detailed above had come from the two Courts below.

During the pendency of the appeal before this Court, appellant Gulzar Singh died and vide order dated 08.08.2016 his legal heirs Baldhip Singh, Jaswinder Kaur and Rajinder Kaur are ordered to be brought on record for the purpose of prosecuting the present appeal.

Heard Mr. Shiv Kumar, learned counsel for the appellants, Mr. R.S. Dadwal, learned counsel for the respondents and perused records of the case.

It is well enshrined principle of law that burden to prove his case always rests upon the plaintiff and can by no means be displaced by the weakness of the defendant. Pleadings are the very axis, around the pivot of which, the case

of the parties revolves. Even a close look at the plaint of the appellant/plaintiff does not bring about as to since when appellant/plaintiff Gulzar Singh (now represented by his legal heirs) claims to be in possession of the disputed property and by what means. The claim is based only on the averment that he has been stacking cow dung cakes, fodder, manure etc. since last many years.

During the course of hearing arguments, the counsel for the appellants has sought to stress the fact that report of the Local Commissioner has come about to which no objections or opposition has come about and has sought to place reliance on **Kalyan Singh Vs. Ravinder Kaur (d) through Lrs. 2018(9) JT 190** and which argument has sought to be placed with much force and vehemence.

Going through the submissions, the Supreme Court of India had repeatedly stressed the fact that the Court is not supposed to collect the evidence on behalf of the parties. Reliance in this regard has been placed on **Padam Sen and another Vs. State of Uttar Pradesh, (1961) 1 SCR 884.**

More so, in another view of the Madras High Court rendered in **T.K. Krishnamurthy Vs. Tamil Nadu Water and Drainage Board** (2006) 5 CTC 178, it has been well enshrined proposition of law that report of Local Commissioner alone can never be the basis for deciding the civil suit and stress was laid

on the point that the parties should prove their case by themselves.

Reverting back to the present case, the pleadings of the applicant/plaintiff are non-descript, vague and without any material particulars and there is nothing suggestive since how long or in what manner the appellant/plaintiff came to be in possession. Mere stacking of cow dung cakes etc. is not sure and cogent evidence of possession. Claim that has come about in the testimony of the appellant/plaintiff as PW1-Gulzar Singh is never substantiated by any means, who accepts in the examination that he had no documentary proof as to the ownership of the disputed property. Even the witnesses examined by him are testifying orally and in the same vein are the depositions of the statements of the witnesses of the defendants. No doubt, the plot, i.e. the subject matter of dispute as per the claim of the appellant/plaintiff lies within the “*Lal Lakir*” and certainly has no revenue record but at least some tangible evidence needs to be brought on record by the appellant/plaintiff who has filed the suit to bring about his legitimate and legal possession. A close look at the report of the Local Commissioner rather does not substantiate much as neither any notice has been given to the opposite party nor they have been associated at the time of inspection and these matters are of much relevance. The cited ratios of the

appellant/plaintiff are factually at variance and do not help his case. The learned first Appellate Court in the impugned findings has rightly taken note of the fact that the disputed property is a vacant plot and mere storing of manure and cow dung cakes or tethering cattle is no proof of being in legal and exclusive possession of the same. Since, the onus was on the appellant/plaintiff to prove his case successfully, the counsel for the appellant could not convince this Court how the findings rendered by the learned Additional District Judge are legally infirm and not commensurate with the evidence on the records.

The appeal is hopelessly without any merits and stands dismissed.

January 13, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No