

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2781 of 2018 (O&M)
Date of decision: 12.03.2020

Devender & Anr.

... Appellants

versus

Daya Kishan deceased through LRs & Anr.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Manoj Makkar, Advocate,
for the appellants.

ARUN MONGA, J.

CM-7230-C of 2018

Application is allowed and delay of 40 days in re-filing the appeal stands condoned.

RSA-2781 of 2018

1. Plaintiffs are in regular second appeal against the concurrent findings recorded by both the Courts below vide which their suit for permanent and mandatory injunction qua suit property has been dismissed.
2. The facts of the case in nutshell are that plaintiffs asserted that their and defendants' predecessor-in-interest was owner of a plot measuring 756 sq. yards. The said plot was partitioned amongst their ancestors in a family settlement in the year 1995. A plot measuring 186 sq. yards carved out of it fell to the share of fore fathers of plaintiffs. Since then they are owners in possession of the same. But the defendants, who have no concern with the same wanted to encroach upon it.
3. Defendants filed written statement and contested the suit. It is admitted that the parties to the suit are descendants of common ancestors.

However, defendants denied that plaintiffs have any concern with the disputed property once the family partition has been effected.

4. The parties led their respective oral and documentary evidence in support of their pleadings to discharge their respective onus as per the issues framed.

5. After analyzing the evidence adduced by the parties, the trial Court vide judgment dated 24.12.2013 held that plaintiffs have failed to establish their ownership over the property in dispute and hence are not entitled to any injunction as prayed for. The plaintiffs unsuccessfully challenged the said findings before the first Appellate Court and their appeal too was dismissed vide judgment and decree dated 23.02.2017. Hence, the instant regular second appeal.

7. I have heard learned counsel for the appellant and have perused the judgments passed by the Courts below vis-a-vis the grounds of appeal taken before this Court.

8. It is settled law that case pleaded in plaint must stand on its own legs. Plaintiff cannot take the advantage of weakness of the defence of the defendant. It has come on record herein that plaintiffs failed to prove their ownership in respect of the suit property. No document of title was produced on record to establish that plaintiffs or their fore fathers were owners in possession of the property in dispute. Except self serving statement of plaintiff/Devender, no evidence was adduced by the plaintiffs. The plaintiffs though had produced on record the site plan showing the existence of the property in dispute, but the same does not confer any title to the plaintiffs in respect of the suit property. That apart, there is a candid admission by the plaintiff Devender to the effect that his house is constructed over plot assigned in family partition by the grand father. This admission rather corroborates the stand of defendants

that the ancestors of the plaintiffs had already constructed a house on the property received in family partition. The plaintiffs thus cannot have any further surviving concern with the suit property, which is under ownership and possession of the defendants.

9. In my opinion, the conclusions drawn by trial Court and learned first Appellate Court are in consonance with the record and facts of the case. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below on appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending applications stand disposed of.

13. No order as to costs.

(ARUN MONGA)
JUDGE

March 12, 2020

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Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No