

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1669 of 1999 (O&M)
Date of decision: 14.12.2022

Sant Singh

..appellant

Versus

Sampuran Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Aashna Gill, Advocate
for the appellant.

Mr. S.S.Rangi, Advocate and
Mr. H.S.Tuli, Advocate and
Mr. Ramanpreet Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.*

2. While assailing the findings of fact arrived at by the First Appellate Court, the defendant has filed the present appeal.

3. The plaintiff's suit for grant of decree of permanent injunction restraining the defendant from interfering in his peaceful possession has been partly decreed to the extent of ½ share of the suit property. The dispute between the parties is with regard to an open space which is used by the parties for storing manure, preparing cow dungs cakes and for tethering cattles.

4.

The trial court dismissed the suit, however, the First Appellate

Court, on the basis of appreciation of the report of the Local Commissioner as well as oral evidence, held that the Eastern side of the open space (Bara) is in possession of the plaintiff, whereas its western side is in the possession of the defendant. The court has only granted injunction qua ½ portion of the property.

5. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellant contends that the description of the suit property in the layout plan Exhibit PW4/A and the layout plan prepared by the Local Commissioner is entirely different. She submits that as per the layout plan produced by the plaintiff, on the Northern side of the property in dispute, there is a 'Samadh' (burial place) and on the Southern side, there is a passage. On the Western side there is a open space of Sh. Balbir Singh, whereas, on the Eastern side, there is an open space of Sh. Bant Singh. She submits that as per the layout plan prepared by the Local Commissioner, the Samadh is located on the Western side, whereas, the passage is on the Eastern side. She further submits that the plaintiff filed the suit claiming possession of the entire bara, whereas, the court has found that the plaintiff is not in possession of the entire open space.

7. This Court has considered the submissions.

8. It may be noted that while identifying the property in dispute, the plaintiff has produced a layout plan in order to provide details of its dimension as well as the properties located in all the four directions. From a comparison of the layout plan prepared by the Local Commissioner along with Ex.PW4/A, it is evident that the property in dispute is same. The description of the properties in all the four directions are also same.

Undoubtedly, the directions are at some variance. However, that would not itself be sufficient to dismiss the suit filed by the plaintiff. Moreover, the Local Commissioner has reported that both the parties were in possession of some part of the property. The First Appellate Court has also relied upon the oral evidence. In these circumstances, in the absence of any material error or perversity, this court does not find it appropriate to interfere.

9. As regards the second argument, it may be noted that the plaintiff filed the suit claiming possession of the entire bara, however, the court found that his possession is restricted only to ½ share. In such circumstances, the court has partly decreed the suit. Moreover, the Courts have not decided the question of ownership.

10. Hence, dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

December 14, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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