

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

205

RSA-1597-1991 (O&M)

Date of decision: 23.11.2023

Dharu Ram

...Defendant-appellant

Versus

Gharsa and Others

...Plaintiff-respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Umesh Aggarwal, Advocate for the appellant.

Respondent No.1 *ex parte* vide order dated 03.12.1993.

AMAN CHAUDHARY, J.

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by both Courts below in favour of the plaintiff-respondent in a suit filed for permanent injunction.

2. Learned counsel contends that the Courts below have committed error by decreeing the suit of the plaintiff-respondent. An application for producing the additional evidence, being the order of the Director Consolidation Haryana, was also wrongly disallowed by the lower appellate Court causing grave injustice to the defendant-appellant.

3. Heard and perused the record.

4. Plaintiff-respondent no.1 filed a suit for permanent injunction against defendant no.1-appellant, which was decreed by the trial Court after the appellant failed to put forth any reliable evidence to substantiate the claim of him being in adverse possession of the property in question. Nothing material could be found in the cross-examination of the witness in an attempt to corroborate the aforesaid

statement. The allegation of their existing Pucca houses and CHAPPERS on the disputed land since the time of the ancestors, was confuted by the report of a Local Commissioner, which stated the same to be freshly built.

5. Learned Appellate Court while upholding the findings of Sub Judge 1st Class also dealt with the question of producing additional evidence i.e. order dated 08.08.1989, passed by the Director of Consolidation Haryana, w.r.t. property in question. While referring to the provisions of order 41 Rule 27 CPC, it was held that the above mentioned order failed to describe the name as well as share of the parties in certain terms, thereby rejecting the application.

6. After a comprehensive consideration of the matter, it has been determined that both the lower Courts have meticulously analysed the evidence presented, before reaching their respective conclusions. Their assessments were thorough and fair, without any apparent misinterpretation or disregard of the evidence, thus, they have arrived at their decisions judiciously and without error.

7. In **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon'ble the Supreme Court has held that, "Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court".

8. Based on the foregoing, it is evident that neither is any question of law involved nor the impugned judgments and decree suffer from any infirmity or

illegality, as such, the present appeal fails and is hereby dismissed.

23.11.2023

M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No

(AMAN CHAUDHARY)

JUDGE