

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

CM-2739-C-2023 in/&
RSA-5260-2019
Date of Decision :17.03.2023

Sawarn Singh and others

...Appellants

Versus

Jaspal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Chopra, Advocate and
Mr. Jashan Chopra, Advocate for the appellants.

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Harsimran Singh Sethi, J. (Oral)

CM-2739-C-2023

The present application has been filed for preponing the date of hearing in the main regular second appeal which is fixed for 27.07.2023.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Date of hearing in the main regular second appeal is preponed from 27.07.2023 to today and appeal is taken up for hearing.

RSA-5260-2019

Learned counsel for the appellants/defendants submits that there is no portion of the land belonging to the respondents/plaintiffs is in the possession of the appellants/defendants hence, he has no objection in case decree dated 05.07.2014 passed by the Court below is executed in

respect of the property categorized as 'X' but the only apprehension of the appellants/defendants is that under the garb of the execution of the said decree, even the land, which is in the ownership of the appellants/defendants be not taken away.

The said apprehension is incorrect. Executing Court will only execute the decree in question as per law and in case decree holder claims more than the awarded in the decree, appellants/defendants can project their claim if any, for the consideration of the Executing Court.

Qua the property which has been described as 'Y' in the judgment dated 30.03.2019 of the Lower Appellate Court, learned counsel for the appellants/defendants submits that the said property is in their ownership on the basis of sale deed dated 11.06.1986.

It may be noticed that the said contention of the appellants/defendants has already been dealt with in detail by the Courts below. No perversity has been pointed out by the learned counsel for the appellants qua the facts or evidence dealt with by the Courts below while recording the said finding. The only argument of the learned counsel for the appellants/defendants is that the Courts below have not appreciated the evidence/facts in the correct perspective.

In fact, the endeavour of the learned counsel for the appellants is that this Court should appreciate the evidence afresh to record a different finding, which is not permissible. In the regular second appeal, this Court is to see that the findings recorded by the Courts below should not be perverse to the evidence or facts on record. In the absence of any such perversity being pointed out by the learned counsel for the appellants, no

interference can be made by this Court.

Learned counsel for the appellants submits that while recording the findings as to how the appellants/defendants came into possession of land in question described as 'Y', the argument of the appellants/defendants that they had become owner by adverse possession, has wrongly been rejected.

It may be noticed that in the written statement the possession was claimed by the appellants/defendants themselves through unregistered sale deed dated 11.06.1986. Once the said stand has been taken by the appellants themselves, it cannot be said that finding recorded by the trial Court qua adverse possession in any manner is perverse to the facts or evidence on record.

At this stage, learned counsel for the appellants submits that the appellants have raised construction on the land described as 'Y' and they are entitled for compensation for the said construction, which will be demolished and qua the said argument, no finding has been recorded by the Courts below.

Learned counsel for the appellants submits that the trial Court be directed to decide the question of compensation qua the construction raised on the land described as 'Y'.

No direction is needed, as being prayed, for the reason that in case any objection is raised in respect of the execution of the decree in question by the appellants, the same will be decided by the Executing Court in accordance with law as per the decree sought to be executed.

No other argument was raised.

Keeping in view the above, no interference is called for by this Court and the present regular appeal is accordingly dismissed.

March 17, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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