



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

106+206

RSA-2419-1997 (O&M)

Date of Decision : 09.09.2024

SARWAN SINGH (SINCE DECEASED) THR LRS

.... Appellants

VERSUS

RAM SARUP (SINCE DECEASED) THR LRS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dhirinder Chopra, Advocate for the appellants.

Mr. Vikas Singh, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

CM-9165-C-2024

1. This is an application for impleading the legal representatives of the deceased appellant.

2. For the reasons stated in the application, the same is allowed. Legal representatives of the deceased appellant, as mentioned in para No.4 of the application, are ordered to be impleaded as parties. Vakalatnama signed by the legal representative of the deceased appellant has already been appended with the application. The same is taken on record. Amended memo of parties is also taken on record. Registry to scan and tag the same at an appropriate place.

RSA-2419-1997

3. The present regular second appeal has been preferred by the plaintiff-appellant, namely, Sarwan Singh (now deceased) challenging the

judgment and decree dated 17.02.1995 passed by the Trial Court and the judgment and decree dated 05.08.1997 passed by the First Appellate Court.

4. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed the present suit for permanent injunction averring therein that he was owner in possession of the site in dispute fully described in the plaint. The site in dispute was averred to be used by him for keeping heaps of manure and tethering his cattle. It was also averred that the plaintiff-appellant had grown a *kikar* tree in the site in dispute. Since the defendant-respondents were alleged to have been threatening to dispossess the plaintiff-appellant, hence the suit for permanent injunction.

5. In written statement the defendant-respondents denied the possession as well as the ownership of the plaintiff-appellant. They pleaded that they are in possession of the site measuring 88 feet x 54 feet as shown in the site plan (Ex.DW-4/A). It was further the case that the remaining part of the suit property is a *toba* (pond) and is at a lower level than the portion in his possession and that there was water standing in the *toba* (pond).

6. Replication was filed reiterating the contents of the plaint and denying those of the written statement.

7. From the pleadings of the parties, the following issues were framed :

1. Whether plaintiff is owner in possession of the suit property ? OPP
2. Whether suit is not maintainable as such ? OPD

3. Whether defendant is entitled to special costs ? If so, to what extent ? OPD
4. Whether plaintiff is entitled to injunction prayed for ? OPP
5. Relief.

8. The Trial Court dismissed the suit vide judgment and decree dated 17.02.1995. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 05.08.1997. Hence, the present regular second appeal by the plaintiff-appellant.

9. Learned counsel for the plaintiff-appellant would contend that the *bara* in front of the house of the plaintiff-appellant was being used for tethering cattle and for keeping heaps of manure as is normally done in villages and that since the defendant-respondents threatened to dispossess the plaintiff-appellant, the suit was filed. Learned counsel would further contend that the oral testimonies of the witnesses clearly reveal that the site in dispute was in possession of the plaintiff-appellant.

10. *Per contra*, learned counsel for the defendant-respondents would contend that both the Courts did not find the plaintiff-appellant in possession of the suit property. Rather, the suit property is adjoining the land of the defendant-respondents. Even the site plan produced by the plaintiff-appellant was not found to be correct.

11. Heard.

12. In the present case undisputedly the site in dispute is a vacant piece of land. It is trite that the possession of a vacant piece of land goes with the title. The plaintiff-appellant miserably failed to show that he was the owner of the suit property. Qua the possession, both the Courts concurrently found that the plaintiff-appellant had failed to prove his possession over the suit property. Even the site plan which has been produced by the plaintiff-appellant was found to be vague and confusing. Infact, in the site plan a part of the *phirni* was shown to be a part of the property in dispute. It was also found that there was a *toba* (pond) on the site in dispute. Both the Courts further concurrently found that the site in dispute was an open space which was being used for common purposes. The learned counsel for the plaintiff-appellant has not been able to convince this Court by pointing to any cogent evidence to show that the plaintiff-appellant was in possession of the suit property. In the absence of the same, no fault can be found with the judgments and decrees passed by both the Courts.

13. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

09.09.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No