

**RSA-1160-2020 (O&M)****1****111.****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-1160-2020(O&M)****Date of Decision: 07.05.2024****UMED SINGH @ MED SINGH****.....APPELLANT****VS****SURESH KUMAR AND ORS****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Parveen Kumar, Advocate for
Mr. Abhimanyu Singh, Advocate for the appellant.

***********GURBIR SINGH, J.**

1. This regular second appeal has been filed by the defendant No.1 against the concurrent findings of the Courts below whereby suit filed by the plaintiff/respondent No.1 for permanent injunction has been decreed in his favour and counter-claim of defendants No. 1, 2, 3 and 5 was dismissed.

2. The parties are being addressed as per their status in the original plaint.

3. In brief, the facts necessary for disposal of this appeal are that plaintiff filed the suit for permanent injunction restraining the defendants from interfering in the use and occupation of 66 square yards of land as shown in red colour in site plan Ex. P1 with specific boundaries, in any manner and further restraining the defendants from carving out passage from property of the plaintiff situated towards West side and not to interfere in the constructions of the plaintiff. The case of the plaintiff is that Shri Chand, father of the plaintiff was owner in possession of land measuring 387 square

**RSA-1160-2020 (O&M)****2**

yards situated within the Lal Dora of the village as shown in red colour, shown as ABCDEF in the site plan Ex.P1. After the death of his father, plaintiff and his brothers inherited his above mentioned property. It was mutually partitioned by plaintiff and his brothers. Plaintiff got specific portion shown by letter ABCDEFGHIJKLM in the site plan Ex.P1.

4. The defendants intend to encroach upon portion ABLM of the suit property and had demolished the wall and points shown as G & H in the site plan Ex.P1. The defendants No.1, 2, 3 and 5 contested the suit. They also filed counter claim for grant of mandatory injunction directing the plaintiff to remove the material filled in the property in dispute. The case of contesting defendants is that defendants are owners in possession of the land shown as ABCDEF in the site plan Ex. DW1/C. The portion shown as GLMN in the site plain DW1/C was the bone of contention between the parties. Said portion was also shown in possession of the plaintiff in the previous litigation between the parties. The plaintiff had illegally and forcibly filled up the foundation upto ground level in the suit property. The decree for mandatory injunction in that regard had been claimed for directing the plaintiff to remove the material filled in the suit property belonging to the defendants.

6. After appreciating the evidence brought on record, the learned trial Court held that plaintiff was proved to be in possession of suit property so plaintiff was entitled for permanent injunction and suit was decreed accordingly. The defendants failed to prove ownership of the suit property so counter claim filed by the defendants was dismissed. Defendant No.1

**RSA-1160-2020 (O&M)****3**

filed the appeal against the judgment and decree passed by the trial Court.

The learned Appellate Court, dismissed the appeal.

7. The counsel for the appellant/defendant No.1 has argued that appellant and other defendants are absolute owners in possession of the suit property. It is their ancestral property. They are enjoying the same from the time of their forefather. The Gram Panchayat filed application for ejectment of defendants from the suit property. The matter is pending in this Court. They are never ejected from the suit property. The plaintiff failed to prove his possession by producing any document including field book of the village. Plaintiff failed to prove when he came in possession of the suit property. The plaintiff forcefully dumped the material on the spot in order to raise construction on the property in dispute. The judgments and decrees passed by the Courts below are liable to be set aside.

8. I have heard the submission of the learned counsel for the appellant/defendant No.1 and have gone through the paper book.

9. It is common case of the parties that suit property is situated in the Lal Dora of the village. No revenue record is prepared to record ownership of property situated in the Lal Dora of the village. In other words, no document of title is available with regard to suit property. It is well settled that in the absence of document of title, possession is the evidence of ownership. A person who holds possession has got nine points out of ten and he is considered as owner in the eyes of law. Possession is the evidence of ownership unless contrary is proved. Even suit property is not abutting the property of defendants. The DW-3, Baljinder Singh also admitted in the cross-examination that plaintiff is in possession of suit property. There is

RSA-1160-2020 (O&M)

4

concurrent findings of both the Courts below that plaintiff is in possession of the suit property. A person in established possession is entitled to protect his possession and he can only be evicted in due course of law. Thus the plaintiff has got every right to protect his possession over the suit property. The defendants have no right to seek mandatory injunction against the plaintiff. The suit of plaintiff is rightly decreed and counter claim of defendants is rightly dismissed.

10. The Courts below have recorded concurrent findings of fact. There is neither any misreading of evidence nor misappreciation of evidence. No substantial question of law is involved in the present appeal. Accordingly, the appeal is dismissed in limine.

11. Pending applications, if any, shall stand disposed of.

07.05.2024
renu

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>