

2025:PHHC:007993



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

112

RSA-910-2021 (O&M)

Date of Decision : 20.01.2025

NARESH KUMAR

.... Appellant

VERSUS

SATBIR

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ram Darshan Yadav, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

CM-1036-C-2023

1. This is an application for restoration of the main appeal which was dismissed for non-prosecution vide order dated 24.01.2023 passed by this Court.

2. For the reasons stated in the application, the same is allowed and the main appeal is restored to its original number and status. With the consent of learned counsel for the appellant, the main appeal is taken on Board today itself.

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3. The present appeal has been preferred by the defendant-appellant challenging the judgment and decree dated 18.12.2017 passed by the Trial Court decreeing the suit of the plaintiff-respondent for permanent injunction and the judgment and decree dated 09.08.2021 passed by the First

Appellate Court whereby the appeal filed by the defendant-appellant was dismissed.

4. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for permanent injunction averring therein that he is owner in possession of a plot measuring 6 Marlas as shown in site plan with blue colour and red boundaries situated in *Aabadi Deh* of Village Lukhi fully described in the plaint. It was averred that the suit property is ancestral property of the plaintiff-respondent having been inherited by him from one Tek Ram son of Jai Ram. It was further averred that the defendant-appellant had no right, title or interest in the suit property.

5. On notice the defendant-appellant appeared and filed his written statement raising various preliminary objections. On merits it was denied that the plaintiff-respondent was owner in possession of the suit property. It was the case set up that the defendant-appellant is the owner of the suit property. It was further averred that earlier a case titled as 'Lal Singh V/s Sube Singh' was filed and the same was decreed in favour of the father of the defendant-appellant on 16.05.1997 holding the father of the defendant-appellant to being in possession of the suit property and that the defendant-appellant herein had inherited the suit property after the death of his father along with his brothers, sisters and mother.

6. Replication was not filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for a decree of permanent injunction against the defendants as prayed for ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has no cause of action to file the present suit ? OPD
4. Whether the plaintiff has no *locus standi* to file the present suit ? OPD
5. Whether the plaintiff has concealed the material facts so suit of plaintiff is liable to be dismissed ? OPD
6. Whether the plaintiff has filed the present suit only to harass the defendants ? OPD
7. Relief.

7. The Trial Court vide judgment and decree dated 18.12.2017 decreed the suit. Aggrieved by the same an appeal was preferred by the defendant-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 09.08.2021. Hence, the present regular second appeal by the defendant-appellant.

8. Learned counsel for the defendant-appellant would contend that the Courts have erred in decreeing the suit of the plaintiff-respondent. It is urged that earlier there was a judgment passed in favour of the father of the defendant-appellant and he was held to be owner in possession of the suit property. It is further the contention that the report of the Local

Commissioner was not proper and that the demarcation was not carried out in accordance with the settled provisions of law.

9. Heard.

10. In the present case both the Courts concurrently found that the Local Commissioner (PW-1) Girdwar Attar Singh, Halqa Nahar visited the property on 01.02.2016 and demarcated the same in the presence of the parties and prepared his report (Ex.PW-1/A). In the report it was categorically stated that the suit property belongs to the plaintiff-respondent. It is to be noticed that the suit property does not have any number because the same is located in the *Lal Dora*. No objections were raised by the defendant-appellant at the time of preparation of the Local Commissioner's report. Further still, the defendant-appellant chose not to file any objections to the Local Commissioner's report. The judgment (Ex.D-2) relied upon by the learned counsel for the defendant-appellant would not come to his aid as the same was an *ex parte* judgment and the plaintiff-respondent was not a party to the said proceedings. Hence the same cannot be held to be binding on the rights of the plaintiff-respondent.

11. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts concerned. 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 merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.01.2025

Aman Jain

NOTE:

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

(ALKA SARIN)

JUDGE