

## Rajbir Vs Ramdiya

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 21, 2012

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Advocate:** Harkesh Manuja, for the Appellant;

**Final Decision:** Dismissed

### Judgement

L.N. Mittal, J.

C. M. No. 6681-C of 2012

1. Allowed as prayed for.

Main Appeal :

Rajbir - son and legal representative of original plaintiff Parsha (since deceased) has filed this second appeal having been non-suited by both the

courts below.

2. Plaintiff filed suit alleging that he is owner in possession of the suit property, but the defendant threatened to dispossess the plaintiff therefrom

forcibly and illegally. Plaintiff sought permanent injunction restraining the defendant from doing so.

3. The defendant broadly denied the plaint averments. It was pleaded that plaintiff is neither owner nor in possession of the suit property. It was

pleaded that suit property is part of bigger plot, which was allotted to defendant and other co-sharers in partition suit of abadi land, which was

decided on 28.10.2005 and after final partition, the defendant obtained possession of the plot no. 44, of which the suit property is a part. The

defendant claimed to be owner in possession thereof.

4. Learned Civil Judge (Junior Division), Gohana, vide judgment and decree dated 21.09.2011, dismissed the plaintiff's suit. First appeal preferred

by the plaintiff (through legal representative) has been dismissed by learned Additional District Judge, Sonapat, vide judgment and decree dated

07.03.2012. Feeling aggrieved, plaintiff's legal representative has filed this second appeal.

5. I have heard counsel for the appellant and perused the case file.

6. Plaintiff led only oral evidence in support of his case. Obviously, statement of Draftsman Ved Pal (PW-3) has no bearing on the question of

ownership and possession of the plaintiff over the suit plot. Then we are left with self-serving statement of the plaintiff coupled with statement of

Pyare Lal (PW-2). These oral statements are not sufficient to prove either ownership or possession of the plaintiff over the suit property. It would

not be difficult for a party to procure one or two witnesses, who may depose according to choice of the party examining them. On the other hand,

defendant has led documentary evidence to depict that plot no. 44, of which the suit property is a part, was allotted to the defendant and others in

partition of abadi property by Civil Court. Plaintiff has not led any documentary evidence in support of his version. The plaintiff has thus been

rightly non-suited by both the courts below.

7. Counsel for the appellant vehemently contended boundaries of the suit property do not tally with the boundaries of the plot allotted to the

defendant in the final partition. The contention appears to be very meritorious and forceful on first blush, but the contention is, in fact, completely

misconceived and meritless. Defendant's case is that he was allotted plot no. 44 measuring 1213 sq. yds., whereas the suit property is measuring

924 sq. yds. only and is said to be part of plot no. 44 and not the whole of the said plot. Consequently, boundaries of part of the said plot i.e. suit

property would not tally with boundaries of the total plot. On the other hand, the appellant has to prove his ownership and possession over the suit

property and only then, he can succeed. He cannot succeed on the basis of alleged weakness of the case of the defendant-respondent.

8. Counsel for the appellant also contended that the defendant, in the written statement, impliedly admitted the possession of the plaintiff over the

suit land by pleading that the plaintiff, in the garb of the suit, along with his group, was storing building material in the suit land. The contention is

again misconceived. If the plaintiff and his group starting placing the material forcibly in the suit plot, it would not mean that the plaintiff is in

possession thereof. On the contrary, the defendant has specifically asserted in the written statement that plaintiff is neither owner nor in possession

of the suit land. Consequently, it cannot be said even remotely that the defendant, by implication, has admitted the possession of the plaintiff over

the suit land. Both the courts below have recorded concurrent finding to non-suit the plaintiff. The said finding has been recorded after analysing the

evidence and appreciating the same. Reasons have also been recorded by the courts below to non-suit the plaintiff. Concurrent finding recorded

by both the courts below against the plaintiff is not shown to be perverse or illegal or based on misreading or misappreciation of evidence. There is

no ground to interfere with the said finding. No question of law, much less substantial question of law, arises for determination in this second

appeal. The appeal is meritless and is accordingly dismissed in limine.