

(2013) 08 P&H CK 0749

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2813 of 1986

Balbir Singh and Another

APPELLANT

Vs

Om Parkash and Another

RESPONDENT

Date of Decision: Aug. 14, 2013

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Ranjit Saini, for the Appellant; M.K. Mittal, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The following substantial question of law arises for consideration in this appeal:-

Whether the Courts below were justified in granting relief of recovery of possession after removal of super structure even after finding that the construction of the defendant did not fall within Khasra No. 37 which was the suit property ?

The suit had been filed for possession and permanent injunction. In the context in which the reliefs are sought, I would understand the claim for injunction was in relation to the property of which he stated that he was in possession and relief of possession was in respect of the property which had been encroached upon by the defendant. The suit had been filed with reference to 9 kanals 7 marals of land out of 39 kanals 9 marlas in khasra No. 102/37. The number 102 referred to the rectangle number and 37 referred to the khasra number. At the trial Court, a commissioner had been appointed, who had inspected the property and drawn a plan identifying the property in Khasra No. 37 as portion marked in red and identifying the property of Khasra No. 27 as the portion marked in green. He had found the construction only in the green portion. The trial Court observed that in relation to vacant land, possession must follow title and since the plaintiff had established his title to the property for the extent which was claimed, granted the relief as sought for, although it also found that the property in Khasra No. 27 did not belong to the

plaintiff. All the same, he had directed removal of the rooms said to have been constructed by the defendant.

2. The defendant was aggrieved by direction for removal of the construction which was inconsistent with the trial Court's finding that property was outside Khasra No. 37. The trial Court also found that construction of the defendant was outside Khasra No. 37 but still confirmed the decree passed by the trial Court.

3. Learned counsel appearing on behalf of the appellants would contend that in a suit for recovery of possession after removal of construction unless plaintiff had himself shown to be in possession of the property and was shown to be entitled to the property, the question of removal of construction was not possible. The counsel also argued that if the property was not a part of khasra No. 37 but was in a distant khasra No. 27, the removal was not possible at all. Learned counsel appearing on behalf of the respondents would join issue on these contentions and state that the property in possession of the defendant was only the property on which the plaintiff was shown to be the owner and therefore, the direction for removal was justified. I had gone through the judgments of the Courts below and also seen the plan and the report on the basis of which the judgment had been delivered. There is a clear demarcation made by the commissioner showing the property in possession of the defendant as falling within Khasra No. 27 which was not the suit property. A direction for removal of construction on such property was clearly wrong. Mistake which the trial Court had made, persisted with the Appellate Court even after observing that the construction by the defendant fell outside khasra number 37. Recovery of possession by removal of the construction was unjustified and judgments of the Courts below directing the removal of construction made by the defendant in Khasra No. 27 are set aside. The second appeal is allowed. No costs.