

(2012) 03 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1571 of 2012 (O and M)

Mir Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 03 P&H CK 0013

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

CM No. 6716-CII of 2012

Allowed as prayed for.

CR No. 1571 of 2012

1. Plaintiffs Mir Singh etc. have filed this revision petition under Article 227 of Constitution of India to challenge order dated 25.02.2012 (Annexure P-5) passed by learned Additional District Judge, Gurgaon thereby dismissing petitioners' application Annexure P-3 for permission to lead additional evidence in first appeal. Plaintiffs filed suit for mandatory injunction and permanent injunction claiming themselves to be in possession of the suit property. Trial Court vide judgment dated 13.04.2010 Annexure P-1 dismissed the plaintiffs' suit holding that plaintiffs are not in possession of the suit property. Plaintiffs have filed first appeal against judgment and decree of the trial Court. During pendency of the first appeal, plaintiffs moved application Annexure P-3 for producing notice dated 02.09.2011 Annexure P-2 issued by defendant-respondent No. 4-Municipal Corporation alleging that plaintiff No. 1 has raised unauthorized construction over land of Khasra No. 771. The said application has been dismissed by lower

Appellate Court vide impugned order Annexure P-5, which is under challenge in this revision petition.

2. I have heard learned counsel for the petitioners and perused the case file.

3. Counsel for the petitioners very emphatically contended that notice Annexure P-2 would depict that petitioners are in possession of the suit property and, therefore, the said notice which has been issued after decision of the suit by the trial Court is required to be admitted in additional evidence in first appeal. The contention although apparently forceful has no merit. Plaintiffs have to establish their possession at the time of filing of the suit. Notice dated 02.09.2011 Annexure P-2 would not help them in any manner in establishing their possession over the suit property at the time of filing of the suit. The suit was filed on 27.01.2003. Notice of Exhibit P-2 was issued more than 8 years thereafter. If the plaintiffs to strengthen their alleged claim started raising unauthorized construction in the suit land now and defendant No. 4 issued notice Annexure P-2 regarding the same, it would not help the plaintiffs in any manner in establishing their claim made in the suit. For the reasons aforesaid, I find no merit in this revision petition. Petitioners' application for additional evidence has been rightly declined by the lower appellate Court. Impugned order of the lower Court does not suffer from any infirmity, much less illegality, perversity or jurisdictional error so as to call for interference in exercise of power of superintendence under Article 227 of the Constitution of India. Accordingly the revision petition is dismissed in limine.