

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

RSA No.1478 of 2009(O&M)
Date of decision: 09.01.2015

Major Ram Chander

...Appellant

Versus

Krishna Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sanjay Mittal, Advocate for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 20.02.2006. Appeal preferred against the said decree failed and was dismissed on 17.12.2008. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for injunction, restraining defendant not to interfere in his peaceful possession or raise any construction over the portion showed in red colour in the site plan, appended with the plaint. It was averred that plaintiff had purchased a land measuring 1050 sq. yards, comprised in khasra No.1900/488, situated within the Municipal area Rewari. The said land was

depicted in the site plan by letters ABCD. It was averred that plaintiff had sold a plot out of the said site, in favour of the defendant, vide sale deed dated 27.09.1984, for a consideration. Further, boundaries of the plot sold were duly depicted in the sale deed. Portion sold to the defendant was also reflected in the site plan by letters BEFG, in green colour. Thus, the area that was left with the plaintiff was shown by letters DHKFEC, and the plaintiff had raised construction on the said portion. It was maintained that a window of one of the room of the plaintiff open towards eastern side of the portion shown in red colour. The said portion i.e. shown in red colour belonged to the plaintiff and defendant had no right, title or interest therein. As defendant intended to raise construction over portion red, plaintiff asked the defendant not to raise any construction therein, but to no avail. Thus, the suit.

In defence, it was pleaded, inter alia, that plaintiff was not the owner in possession of any property, as claimed in the plaint, as he had already sold the entire property owned by him. Site plan, appended with the plaint, was stated to be wrong and incorrect as per the position existing on the spot. It was maintained that at the time of execution of the sale deed dated 27.09.1984, no window etc. was mentioned and thus, the story being propounded by the plaintiff was concocted. Further, plaintiff having constructed the room in question,

sold the eastern side of his property, in favour of the defendant. That being so, it was maintained that the plaintiff had no right to carve out mories towards the land of the defendant. Thus, dismissal of the suit was prayed for.

Trial court, on a consideration of the matter in issue and evidence on record, found that it was not in doubt that plaintiff happened to be the owner of the entire property, shown with letters ABCD, in the site plan (Ex.PW3/A). Undisputedly, father of the plaintiff sold a plot measuring 361 sq. yards, out of the said site, in favour of the defendant-Krishna. Case set out by the plaintiff was that the property that was shown in green colour with letters EFGB, was a property that was sold to Krishna. Whereas, property that was shown in red colour, was still owned by him. However, on an analysis of the evidence on record, it was observed that there was a pucca boundary wall from Mark X to Mark E. And the property shown in red colour was outside the boundary wall of the house of plaintiff Prahlad. That being so, it was observed that normally no one would leave his land outside the boundary wall of his house. As regards the depositions of the draftsmen, examined by the parties, it was observed that the suit property was not properly demarcated by them and thus, no reliance could be placed on their testimonies. Defendant had purchased a plot measuring 361 sq. yards and the dimensions thereof were clearly depicted in the sale deed

dated 27.09.1984. It was observed that for plaintiff to succeed, he ought to have moved an application for appointment of local commissioner and got the suit property demarcated. In the absence of exact demarcation, it could not be said that the portion, shown in red colour, in the site plan (Ex.PW3/A), was still owned by the plaintiff. Particularly, when the said site lies outside the boundary wall of the house of the plaintiff. That being so, it was concluded that plaintiff failed to substantiate his claim that he was owner in possession of the site shown in red colour in the site plan. Resultantly, it could not be said that the defendant tried to interfere with his possession. Accordingly, it was observed that defendant could certainly raise construction over the portion owned by him and thus, could not be restrained. And the suit was dismissed.

Being dissatisfied with the decree, plaintiff preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the parties and perused the records.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the

courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Concededly, plaintiff had sold a plot measuring 361 sq. yards, out of the total land measuring 1050 sq. yards, to the defendant. Needless to assert, for plaintiff to succeed, he was required to prove that plaintiff was the owner of a portion shown in red colour in the site plan (Ex.PW3/A). Records show that there exists a pucca boundary wall from Mark X to Mark E, that surrounds the home of the plaintiff. And the portion that is shown in red colour in the site plan is situated outside the boundary wall of the house of the plaintiff Prahlad. That being so, it was rightly concluded by both the courts below that no one would leave any portion of his property outside the boundary wall of his house. Still further, for plaintiff to be entitled to injunction prayed for, he was required to get the property demarcated and prove that the portion shown in red colour was indeed owned by him. Concededly, neither any demarcation report was produced by the plaintiff nor any application for appointment of local commissioner to carry out demarcation was ever moved. On an analysis of the site plan (Ex.PW3/A)/Mark A, it was concluded by the first appellate

court that the plaintiff had failed to show the measurement of the property from Point A to H. He further failed to point out the measurement of the suit property from Point A to G. So much so, Ram Chander (PW1), who appeared as attorney of the plaintiff, also failed to correctly state the measurement of the land in dispute. Ex facie, plaintiff failed to substantiate his case and thus, dismissal of his suit was the necessary and inevitable consequence. Learned counsel for the appellant could not point out as to how the conclusions that have concurrently been recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

January 9, 2015
Rajan

(Arun Palli)
Judge