

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4300 of 2011 (O&M)

Date of Decision: 05.08.2015

Hari Parkash deceased through his LRs

... Appellants

Versus

Satpal

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.C. Rajput, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The plaintiff is in second appeal against the judgment and appellate decree of the court of the learned Additional District Judge, Sonapat in Civil Appeal # 54 of 2009. The judgment affirms the findings of the trial Judge in dismissing the suit.

2. The dispute is about possession of the front portion of the plot of plaintiff bearing # 338 measuring 217 sq. yards situated in the abadi deh of Village Bari, Tehsil Ganaur, District Sonapat which touches the gali on its southern side of where the defendant's property lies. The plaintiff purchased the property from the defendant in the year of 1988. The dispute between the parties was limited to whether the suit portion was left open for his use.

3. The plaintiff instituted a suit for recovery of possession of the disputed property marked by letters CDEF in the site plan and that he should not be dispossessed forcibly by the defendant.

4. On notice, the defendant entered appearance and filed written

statement denying the averments in the pleadings in the suit. Defendant contended that the site in dispute was owned and possessed by his brother Shiptar and he has no concern with the plot in question. Shiptar was not impleaded as defendant. Defendant admitted that he sold plot measuring 217 sq. yards to the extent of the gali on the southern side of the plot but refuted plaintiff's claim on land marked CDEF in the site plan Ex.P-1.

5. It was not disputed that plaintiff after purchasing the property from the defendant constructed a boundary wall around his plot and, therefore, any intrusion into property sold was not possible. Demarcation also was not possible because the disputed property fell in the abadi deh of the village and in the residential area where there are no khasra numbers. The question put to trial was whether defendant had encroached upon the plot of land in dispute which he sold to the plaintiff in the year 1988. The plot was vacant and in possession of defendant's brother Shiptar.

6. The learned trial Judge read the testimony and found that when the plaintiff deposed in the witness box as his witness he admitted that he had taken possession of his plot on the date of purchase i.e. June 07, 1988 and also constructed the boundary wall at the time around his plot then it was an admission which knocked out the basis of the claim in the suit that the vacant plot was for meant for his use and occupation as a result of the sale deed. When the plaintiff had enclosed his space by raising a construction then he could not step out of the boundary wall and assert a claim to possession of anything over and above 217 sq. yards. The plaintiff led no documentary evidence on the fact-in-issue and depended solely on his oral testimony which when read contradicts his stand in the plaint. On

these premises, the suit was dismissed by the Additional Civil Judge (Senior Division), Ganaur on November 19, 2009.

7. Aggrieved by the judgment and decree of the trial court, the unsuccessful plaintiff preferred an appeal to the subordinate appeal court which agreed with the findings of the trial court and dismissed the appeal. Hence the present appeal under section 100 of the code of Civil Procedure.

8. It was the contention of the plaintiff in appeal that while he constructed the boundary wall he had left the disputed portion of it in front of his house for his personal use and beneficial enjoyment of his property but it has been encroached upon by the defendant. Even if demarcation of the plot was possible by local commission the work was neither carried out nor requested before the trial court. This alleged lacuna was conveniently palmed off as poor advice tendered by his counsel when the trial was in progress. To make up for lost time the plaintiff moved an application before the court of first appeal to get the disputed property demarcated for a just and fair decision of the case. It was argued by the plaintiff in appeal that if his application under Order 41 Rule 27 CPC for additional evidence is found worthy of acceptance then either the case be remanded to trial court for recording additional evidence or it may be so done by the court of first appeal itself. But the application was opposed by the defendant. The court of first appeal reasoned that the application did not merit acceptance since it was the plaintiff who had to establish his case by production of best evidence and he could not depend on the weaknesses of the defence of the opposite party. If there was illegal occupation of land beyond an inch of the land description in the sale deed it was for the plaintiff to prove the truth of

it. In his deposition, the plaintiff admitted that there is a vacant plot belonging to the brother of the defendant and he is in possession of it. He also admitted that on the southern side of the plot, there is a private street 11 ft wide and on the same side is the plot of the brother of the defendant. He further admitted that he had a passage from the canal side to access his property. He did not deny that on the date of buying the property the same was occupied by him. If there was an encroachment on his land he did not complain to the police nor did he say as to when the encroachment was brought into existence. Plaintiff's supporting witness Ramdass Lambardar son of Mange Ram PW-2 also admitted the construction around the boundary wall by the plaintiff. To make it worse for the plaintiff, PW-2 rather honestly deposed toward the end of his cross-examination that the plaintiff took possession of the plot as per the area mentioned in the sale deed Ex.P-1 which did not deny him access to the outside world independently. In any event, the site plan Ex.P-1 attached to the sale deed is not a document of title and the same has not been proved in evidence. It is no more than a site plan prepared by the hand of the plaintiff without attestation of its on the spot truth. Still further, the actual length and breadth of the plot bought by the plaintiff from the defendant as per the sale deed was rectangular while in the site plan it was shown in the form of square and both mismatch and belie the version of the plaintiff. This mismatching has not been explained and, therefore, the learned Additional District Judge, Sonapat found nothing wrong in the findings of the learned trial court.

9. I have no reason to disagree with the concurrent findings on a pure question of fact whether there was any encroachment or not made by

the defendant and I find that there is hardly any scope left in second appeal to interfere in the matter and would dismiss the appeal.

10. It is ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

5.8.2015
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