

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

**RSA NO. 2596 OF 2012 (O&M)
DECIDED ON : 12.08.2015**

Lachhman Singh and others

...Appellants

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Amit Jain, Advocate.

K. C. PURI, J.

Challenge in this appeal is to the judgment and decree dated 01.02.2012 passed by Ms. Anita Chaudhary, District Judge, Panchkula, vide which the appeal preferred by the plaintiffs/ appellants against the judgment and decree dated 23.02.2010 passed by Ms. Jyoti Birbian, Civil Judge (Junior Division), Panchkula, was dismissed.

Brief facts as gathered from the record are that the plaintiffs filed a suit for permanent injunction alleging that they are original proprietors of village Patti, Jaisingh

Pura, Mauza Ramgarh, since the time of their forefathers and are in occupation, actual and physical possession of the suit property as shown in the plaint. They further claimed that the suit property was earlier used as Bara which was situated within lal lakir of the village. They had constructed boundary walls around their respective Baras without any encroachment over any property. However, major portion of their house was demolished illegally and forcibly by the defendants. Hence, the suit was filed.

On put to notice, defendants No.1 and 2 appeared and filed joint written statement pleading therein that the land in question is reserved for common purposes of village as per Jamabandi for the year 1994-95. The land being shamlat deh, vests in the Gram Panchayat, Ramgarh and the plaintiffs have no right, title or interest over the same. It was further denied that the suit property is situated in lal lakir. However, it was pleaded that the same is situated in Khasra No.111 within the Phirni and in the ownership of Nagar Panchayat. The land in question was demarcated through the Tehsildar and the demarcation report dated 30.05.2001 specified that plaintiffs No.1 and 4 have only temporary possession over the suit property by way of putting manure etc and no construction has been raised

thereupon. The other allegations were denied.

Defendant No.3 Panch of the village filed separate written statement reiterating the facts as submitted by defendants No.1 and 2.

Defendant No.4 Municipal Council, Panchkula, filed separate written statement formally disputing the claim of the plaintiffs.

Replication was not filed. From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiffs are entitled for the decree of permanent injunction as prayed for ? OPP
- 2) Whether the plaintiffs are entitled for the decree of mandatory injunction, as prayed for ? OPP
- 3) Whether the civil court has no jurisdiction to try and entertain the present suit ? OPD
- 4) Whether the suit is not maintainable in the present form ? OPD
- 5) Whether the suit is bad for want of notices u/s 205 of Haryana Panchayati Raj Act, 1994 ? OPD

6) Relief.

In order to prove their case, both the parties led their respective evidence. The learned trial court, after appraisal of the evidence, dismissed the suit of plaintiffs.

Feeling dissatisfied with the above said judgment and decree dated 23.02.2010 passed by Civil Judge (Junior Division), Panchkula, the plaintiffs filed appeal which was dismissed vide judgment and decree dated 01.02.2012 passed by District Judge, Panchkula.

Still feeling aggrieved by the above said judgment and decree dated 23.02.2010 and 01.02.2012, the plaintiffs/appellants have preferred the instant regular second appeal.

Learned counsel for the appellant, in para no. 14 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether in facts and circumstances of the instant case, the appellants having proved by affirmative evidence the identity of the property and that they were owners in possession of the property in dispute, the approach of the learned courts below in

dismissing the suit is not perverse ?

- 2) Whether in the facts and circumstances of the instant case the approach of the learned courts below in proceeding on the assumed facts in dismissing the suit is not illegal and unsustainable in law ?
- 3) Whether in the facts and circumstances of the instant case the approach of the learned courts below in not discussing the oral as well as documentary evidence led by the appellants is not illegal and can be sustained in law ?

I have heard learned counsel for the appellants and have gone through the records of the case.

The case of the plaintiffs-appellants is that they are owners in possession of the suit property. It is pleaded that suit property i.e. BARA is situated within the Lal Lakir whereas the case of the defendants is that it is a part of Khasra No.111 belonging to ownership of Nagar Panchayat and the demarcation was conducted. On 25.01.2001 plaintiff tried to put manure etc. over the suit property and no construction was raised there upon.

It is a settled law that in a suit for permanent injunction, plaintiffs have to prove that they are in

possession of the suit property. There is concurrent finding of fact recorded by both the Courts below that the plaintiffs have failed to prove the ownership and possession over the suit property. It is proved that land was owned by Gram Panchayat. Otherwise also by putting pits etc. a party cannot be said to be in possession of the property. There is concurrent finding of fact recorded by both the Courts below that plaintiffs have failed to prove their ownership and possession. The said concurrent finding of fact is not the result of misreading and misinterpreting of the evidence on the file. Otherwise also, during the course of argument, learned counsel for the appellants could not draw pointed attention to the evidence produced from which it could be inferred that the plaintiffs are the owners in possession of the suit property.

So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. Consequently, the appeal stands dismissed.

(K.C.PURI)
JUDGE

12.08.2015
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