

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 1719 of 2013 (O&M)
Date of decision:- 13.07.2015

Parshant Gupta

...Appellant

Versus

Municipal Committee Narnaul & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sanjay Vashisht, Advocate
for the appellant.

RITU BAHRI J.

Plaintiff-Appellant (for short 'the appellant') is in second appeal against the concurrent finding of fact recorded by both the Courts below.

The facts not in dispute are that the land comprising in khasra No. 2004 (herein after to be referred as the suit property) measuring 0-13 biswa was owned by Gulab Devi. After the death of Gulab Devi, the appellant along with respondent No. 3 had purchased the suit property from the legal heirs of Gulab Devi i.e from Savitri and Smt. Shashi vide sale deed bearing No. 1455 dated 28.12.1998 (Ex P1) and sale deed bearing No. 1456 dated 28.12.1998 (Ex P2). Appellant as well as respondent No. 3 constructed a boundary wall over the suit property and respondent Nos. 1

and 2 are threatening them to demolish the boundary wall.

On notice, respondent Nos. 1 and 2 filed their written statement and pleaded that Loku Ram son of Gokul Dass was the original owner of the suit property. He sold the suit property to Attam Parkash vide sale deed bearing No. 1208 dated 23.03.1976 Ex D8. The site plan prepared by the draftsman Kailsh Chand Sanghi at the time of the execution of the aforesaid sale deed was annexed with the sale deed as Ex DE3/A. The measurement of the suit property as per the aforesaid site plan Ex DW3/A are as under:-

North	12	Gathas
South	11	Gathas
East	19	Gathas
West	30	Gathas

Subsequently, Gulab Devi became the owner in possession of the suit property by way of pre-emption decree passed against Attam Parkash. Appellant as well as respondent No. 3 have intentionally not filed site plan and Ak-shijra of the suit property and have illegally encroached the municipal council land comprised in khasra No. 6063/2003 by raising construction upto 28 gathas instead of 19 gathas on the eastern side. The aforesaid encroachment was duly reported by Lala Ram in his Local Commissioner report Ex DW5/A and site plan Ex DW6/A, who was appointed as a Local Commissioner in pursuance of the complaint of

the neighbourers, when the plaintiffs tried to encroach the neighbourers land. Further in pursuance of the Local Commissioner report Ex D9 and site plan Ex D 10 in the petition filed by the M.C against Gulab Devi under Haryana Public Premises Act, Gulab Devi was ordered to remove the encroachment. Respondent Nos. 1 and 2 have pleaded that the suit of the plaintiffs themselves have encroached the Municipal Committee land and have obstructed the public passage.

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is owner in possession of plot bearing khewat No. 1160 khatauni No. 1599 Khasra No. 2004/0-13 measuring 0.13 biswa as alleged in the plaint? OPP
2. Whether the plaintiff is entitled for the relief claimed in the suit? OPP
3. Whether the plaintiff is stopped to file the suit by his own act and conduct? OPD
4. Whether the defendant is entitled to special costs? OPD
5. Relief.”

The trial Court after going through the entire evidence, dismissed the suit of the plaintiffs.

In the sale deeds Ex P1 and P2, the dimensions of

the suit property have not been mentioned. Plaintiffs have also not filed site plan or Ak-shijra of the suit property. The only document which have been tendered by the plaintiffs with regard to the dimensions of the suit property is Local Commissioner Report (Ex P3), which was filed in the litigation between Smt. Gulab Devi and Municipal committee and others in civil suit bearing No. 140 dated 08.08.1996/22.09.2005.

The aforesaid demarcation report was duly conducted in the presence of the plaintiff, Parshant Gupta, Advocate and the defendant's representatives and Mr. Ramesh Chand Patwari. Therefore, the aforesaid demarcation report is binding upon the parties.

On the basis of the demarcation report Ex P3, the dimensions of the suit property are:

North	12	Gathas
South	11	Gathas
East	19	Gathas
West	30	Gathas

Since the demarcation report was held to be binding upon the parties, the lower Appellate Court set aside the finding of the trial Court on issue No. 1 and 2 and the respondents are restrained from interfering in the ownership and possession of the plaintiffs over the suit property as per the dimensions of the suit property i.e Khasra No. 2004

stated in the demarcation report Ex P3. Any land in excess thereof will be deemed to be the respondent's land and they are entitled to take it back from the plaintiffs.

Learned counsel for the appellant has argued that this observation of the lower Appellate Court is beyond the pleadings as the suit of the appellants was for mandatory injunction restraining the defendants from demolishing the boundary wall over the suit property.

This argument of learned counsel is liable to be rejected as the suit had been decreed in view of the demarcation report in Khasra No. 2004 as this report was not disputed by the plaintiffs themselves and the respondents were merely given an opportunity to take the land back in accordance with law, which belonged to them.

The observation given by the lower Appellate Court is not beyond the pleadings given by the plaintiffs in his suit.

In view of the above, the judgments passed by both the Courts calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

July 13, 2015
G Arora

(RITU BAHRI)
JUDGE