

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

**RSA No.776 of 2013(O&M)
Date of Decision : 19.5.2015**

Balinder Singh

.....Appellant

Versus

Improvement Trust, Karnal

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Parminder Singh, Advocate
for the appellant.

Mr. Mahavir Sandhu, Advocate
for the respondent.

GURMIT RAM, J.

This regular second appeal has been preferred by the appellant Balinder Singh who was plaintiff before the learned trial Court against the judgment and decree dated 5.6.2010 passed by the learned Civil Judge (Senior Division), Karnal vide which his suit was dismissed with costs and the judgment and decree dated 4.10.2012 passed by the Court of learned Additional District Judge, Karnal vide which the appeal preferred by the appellant against the above said judgment and decree dated 5.6.2010 was also dismissed with costs.

2. The case of the appellant herein (plaintiff) before the learned trial Court in nutshell was that he had purchased a house constructed upon plot No.18 situated in Randhir Colony, Karnal from one Bimla Rani. The said Bimla Rani had purchased plot Nos.17 and 18 situated in Randhir Colony, Karnal which was abutting Mugal Canal in the year 1974. Thereafter, she submitted a plan to the Municipal Committee, Karnal for raising construction of

residential house over the above-said plots, which was sanctioned in the year 1975. Thereafter, she raised construction over these plots and a portion of these two plots was sold to the plaintiff vide a registered sale deed. He has been in occupation of the disputed house since the year 1987. Then a notice was served upon him on 16.6.1987 by the Municipal Committee to the effect that an area measuring 40' x 65' has been encroached upon illegally which forms part of Mugal Canal. Then he filed a civil suit for injunction in this regard which was dismissed and an appeal filed by him in this connection was also dismissed. Then the Municipal Committee took the possession of that portion from him after removing the alleged encroachment and subsequent thereto, the Municipal Committee sold the same by converting it into seven booths bearing Nos.423 to 429. It was further case of the plaintiff that in the back side of these seven booths, the property of Bimla Rani and of present plaintiff had been shown by the improvement trust. Thereafter, another notice dated 26.6.2002 was served upon him wherein alleging that he had encroached upon an area forming part of khasra No.5848 shown to be area of Mugal Canal i.e. 18 feet on northern side, 68 feet towards eastern side and zero feet towards southern side. This notice was challenged by the plaintiff on the plea that the alleged fact of encroachment mentioned in it was not mentioned in the earlier notice dated 26.6.1987. It was further his case that plot No.19 adjoining the property of plaintiff is owned by Sh. Ishwar Chand Sharma. A notice was also served to him by the Improvement Trust who filed a civil suit in this regard which was decreed in his favour and the appeal filed against that decree was dismissed. Now, a regular second appeal in this regard is pending in this Court. Then it was also the plea that from the decision given in the earlier suit instituted at the instance of Ishwar Chand Sharma, Advocate, it was clear that no encroachment of any part of the land bearing khasra No.5848 had been made and hence the instant suit.

3. On notice, respondent herein who was defendant before the learned trial Court filed written statement. It was alleged that the land of khasra No.5848 was got demarcated by the defendant – trust and on demarcation, it was found that the plaintiff had encroached upon the area measuring 68 feet towards east, 68 feet towards west, zero feet towards south and 18 feet towards north of this khasra number. Then it is admitted that earlier also a notice was sent to the plaintiff for unauthorized encroachment who filed a suit for injunction which was dismissed by the trial Court and the appeal filed in this connection was also dismissed. Then the alleged encroachment was got removed. It was further the case of the defendant that subsequently plaintiff and Ishwar Chand Sharma had again encroached upon the part of khasra No.5848 which fact is clearly established from the demarcation report. As per the claim of the plaintiff, he had purchased 298.3 square yards land from Bimla Rani vide a sale deed but at present he is in possession of more area than the area purchased by him vide this sale deed. The above-said Ishwar Chand Sharma had also encroached upon part of khasra No.5848 and a matter in this regard is still pending before this Court. Moreover, the present plaintiff could not be permitted to take advantage of the judgment in a civil suit pertaining to Ishwar Chand Sharma since the claim qua the suit land is to be determined independently in the light of pleadings as well as the evidence produced by him.

4. The learned trial Court after hearing the counsel for both the parties and perusing the record as well dismissed the suit of the plaintiff with costs vide the impugned judgment and decree dated 5.6.2010. The appeal preferred by the plaintiff against this judgment and decree was also dismissed by the Court of learned Additional District Judge, Karnal vide judgment and decree dated 4.10.2012.

5. Being aggrieved from the findings recorded by both the

Courts below vide the impugned judgments and decrees, the appellant-plaintiff approached this Court by filing the instant regular second appeal.

6. Learned counsel for the appellant and respondent were heard and record as available on the file was also perused.

7. Learned counsel for the appellant at the time of the arguments on this appeal has raised the contentions on the basis of the pleadings as put-forth by the appellant-plaintiff in the plaint. It is further his contentiion that a similarly situated suit filed by Ishwar Chand Sharma against the respondent herein (Improvement Trust, Karnal) was decreed by the learned trial Court and the appeal filed against the judgment and decree of the trial Court was dismissed by the learned Appellate Court. It is further his submission that on the basis of the judgments and decrees passed in the case of Ishwar Chand Sharma, the instant suit was also to be decreed, but both the Courts below have wrongly dismissed the suit of the appellant herein without taking into consideration the above-said judgments and decrees.

8. Now, I want to discuss the evidence of both the parties in order to see as to whether the above contentions raised by the learned counsel for the appellant are correct or not.

It was the claim of the appellant before the learned trial Court that he had purchased a constructed house upon plot No.18 from one Bimla Rani vide a registered sale deed and that now he has been in possession of the same. It is further his contention that he had not made any encroachment upon the land bearing khasra No.5848 stated to be belonging to Mugal Canal area. So in this case the sale deed was the best evidence vide which the present appellant had allegedly purchased the disputed property from its previous owner Bimla Rani, but the appellant did not produce the same at any stage during trial of the case. So, an adverse inference is liable to be drawn against him for

withholding the said best piece of evidence for determining the point in controversy effectively and properly. Then the plaintiff had made out his case on basis of the judgments and decrees delivered in the earlier suit filed at the instance of Ishwar Chand Sharma, Advocate against Improvement Trust, Karnal. Then it was also his contention in this regard that the property in dispute in the instant suit and in the case of said Ishwar Chand Sharma was belonging to khasra No.5848. But the present appellant was to establish his own case as per his pleadings and also by leading evidence in support thereof independently. The judgment and decree delivered in the earlier suit stated to be filed by Ishwar Chand Sharma, Advocate is to be taken as a judgment in persona and not judgment in rem and as such the same cannot be of any help to the present appellant in the instant suit. Moreover, this judgment and decree has not become final since a regular second appeal against the same was still pending, when the instant suit was instituted.

Then PW3 Ram Kumar Kamboj, Draftsman proved the site-plan Ex.P4 which he had prepared after inspecting the disputed property. As per his statement, the suit property is part of Khasra No.5471. Then he also testified in his cross-examination that he demarcated khasra Nos.5471 and 5848 at the spot but his testimony does not inspire any confidence for the reason that this witness did not prepare any demarcation report nor did he get any help from Halqa Patwari or Kanungo at the time of his alleged demarcation of both the khasra numbers.

DW4 Sahab Singh, Kanungo had proved the demarcation report Ex.D4 along with certified copy of the site plan Ex.D5. On the other hand, the appellant had failed to bring on the record any other demarcation report in order to controvert the demarcation report Ex.D4 as brought on the file by the respondent in the statement of DW4 Sahab Singh.

Then DW5 Mahipal, Trust Engineer deposed that demarcation of Khasra Nos.5848 and 5471 was made on 12.3.2002 as per the order of Deputy Commissioner, Karnal and on demarcation, it was found that Balinder Singh had encroached upon part of khasra No.5848 i.e. 68 feet towards east, 68 feet towards west, zero feet towards south and 18 feet towards north.

Then it is also found mentioned in the record available on the file that during the pendency of the regular second appeal in the case of Ishwar Chand Sharma, this Court appointed Sh. Vikas Bahl, Advocate as local commission to carry out the demarcation of the land bearing khasra Nos.5848 and 5471. This local commission submitted his report on 15.3.2003 to this Court. This Sh. Vikas Bahl, Advocate was examined by the defendant as DW2 who had proved the demarcation report qua the above-said both the khasra numbers as Ex.D1 along with one site-plan Ex.D2.

9. Then at the time of arguments on the appeal, copy of the judgment delivered by this Court in RSA No.3543 of 2001(O&M) dated 8.7.2014 titled as ***Karnal Improvement Trust Versus Ishwar Chander*** was brought to the notice of this Court. Para No.38 of this judgment is held to be relevant to determine the matter in issue in the instant appeal which reads as under:-

“38. In view of the aforesaid discussion, in my opinion, the findings recorded by both the courts below are perverse. The area encroached upon by the respondent-plaintiff falls within khasra No.5848, which is in ownership of the appellant. The respondent-plaintiff, who has no title or interest in the aforesaid admittedly encroached area, cannot be permitted to retain possession thereof. The substantial questions of law, as framed in the aforesaid appeal, are answered in favour of the appellant and

against the respondent-plaintiff. Consequently, the appeal is allowed.”

10. Since, the appeal of the defendant-appellant/Karnal Improvement Trust has been accepted in RSA No.3543 of 2001(O&M) cited supra so as such judgments and decrees delivered in favour of Ishwar Chand Sharma by the both the Courts below as a result thereof had been set aside. So as a result thereof, the instant appeal is to fail and liable to be dismissed.

11. In the light of the above discussion, this appeal being meritless stands dismissed with costs and disposed of accordingly.

Since the main appeal has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

19.5.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No