

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2297 of 2015 (O&M)
Date of Decision: May 25, 2015

Nahar Singh

...Appellant

Versus

Hygenic Foods and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.S.Brar and Mr.A.P.Kaushal, Advocates
for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Nahar Singh has filed this regular second appeal against Hygenic Foods and other respondents-defendants challenging the impugned judgment and decree dated 07.12.2011 passed by learned Civil Judge (Junior Division) Khanna vide which the suit filed by the plaintiff for possession and permanent injunction was dismissed and also the judgment and decree dated 20.02.2015 passed by learned District Judge, Ludhiana vide which the appeal filed by the appellant-plaintiff was also dismissed.

The brief facts of the case are that plaintiff-appellant Nahar Singh filed a suit against Hygenic Foods, Vinod Kumar Dutta and Sangeeta Dutta for possession of land measuring 1 kanal 17 marla out of the total land 12 kanal 16 marla by way of demarcation of land and suit for restraining the defendants by order of perpetual injunction

from raising any sort of construction, alienating and changing the nature of the suit property. It is mainly stated in the plaint that plaintiff is owner of land measuring 1 kanal 17 marla. Originally the plaintiff was owner of total land measuring 12 kanal 16 marla. Out of this land, plaintiff sold the land measuring 5 kanal to defendant No.1 (Hygenic Foods) vide registered sale deed dated 01.07.2002. Plaintiff also sold land measuring 4 kanal 1-2/3 marla to defendant No.3 (Sangeeta Dutta) vide registered sale deed dated 01.07.2002. However, the plaintiff was paid consideration of only 104 biswas in place of 109 biswas. It is further stated that plaintiff had left 1 kanal 17-1/3 marla of land for the streets adjoining the above-mentioned land without any consideration. Now after deducting the land sold to the defendants and the land left for the streets, the plaintiff is still owner of land measuring 1 kanal 17 marla. It is also stated that defendants have taken the possession of land more than that purchased by them. The defendants without having any right or interest, have taken the possession of the land in question.

In the written statement, the case of the defendants is that defendant No.1 is owner in possession of land measuring 5 kanal and defendant No.3 is owner in possession of 4 kanal 1-2/3 marla after the execution of the sale deeds dated 01.07.2002 and the plaintiff was left with no land out of the land mentioned in the headnote of the plaint. The area left for streets by the plaintiff still continues to be erroneously recorded in the name of the plaintiff. No land of the plaintiff is in the illegal possession.

Learned Civil Judge (Junior Division) Khanna, after appreciating the evidence, dismissed the suit of the plaintiff vide judgment and decree dated 07.12.2011. An appeal was filed by the plaintiff before learned District Judge, Ludhiana and the appeal was dismissed by learned District Judge, Ludhiana vide judgment and decree dated 20.02.2015.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant, at the time of preliminary hearing, argued as per the case of the plaintiff and contended that the Courts below have given wrong findings, which are not as per evidence on record.

After hearing learned counsel for the appellant and after going through the record, first of all, I find that the findings given by the Courts below are concurrent. Both the Courts below have correctly appreciated the evidence in right perspective. No evidence has been misread by the Courts below. The plaintiff failed to prove his case by leading cogent evidence. He has simply stated that he was owner of 12 kanal 16 marla and sold 5 kanal to defendant No.1 and 4 kanal 1-2/3 marla to defendant No.3. He also stated in the plaint that he has left 1 kanal 17-1/3 marla for the streets and by calculating this area, he is saying that he is still owner of 1 kanal 16 marla, which is in illegal possession of the defendants. The case of the plaintiff is vague. He is nowhere saying as to area of which side is in illegal possession of defendant No.1 and which area is in illegal possession

of defendants No.2 or 3. The plaintiff has examined himself as PW-1 and further examined Navdeep Gupta, Handwriting and Fingerprint Expert as PW-2. He has neither brought on record any demarcation report nor any cogent evidence to prove that the defendants are in illegal possession of excess area than they purchased vide sale deeds.

The perusal of the record shows that there is no cogent evidence on record to prove the encroachment by the defendants. Therefore, both the Courts below have rightly reached to the conclusion on the basis of the evidence and dismissed the suit.

In view of the above, I find that the judgments and decrees passed by the Courts below are correct, as per evidence and do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 25, 2015
Vgulati

(INDERJIT SINGH)
JUDGE