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

**RSA No.3072 of 2015
Date of Decision: 09.10.2015**

PREHLAD SINGH AND ORS

.....Appellants

Vs

SMT. PARVATI DEVI AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.P. Bhandari, Advocate
for the appellants.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Plaintiffs are in second appeal in a suit for declaration with consequential relief of permanent injunction and mandatory injunction.

[2]. They claimed that they are owners in possession of the house in dispute on the ground that the same was purchased by their predecessor from one Bar Batta @ Mohamad Shah on 08.06.1946. Plaintiffs No.2 and 3 purchased part of the suit land from one Smt. Vidhyawati and another vide sale deed No.2842 dated 25.08.2003 and thereafter they raised construction on the site in question.

[3]. Plaintiffs alleged that the defendants No.1 to 4 were owners

of H.No.EP-2 measuring 180 square yards as the same was allotted to Ram Narayan by the Rehabilitation Department. Defendants No.1 to 4 further sold land measuring 215 square yards in excess to the allotted land i.e. 180 square yards vide sale deed dated 30.11.2006 for a total sale consideration of Rs.7 lacs. In this way excess area of 35 square yards was sold by defendants No.1 to 4. Plaintiffs further alleged that they were also owners in possession of two *Galīs* measuring 60 feet and 63 feet respectively and the defendants are trying to encroach upon the said land.

[4]. The suit was contested by the defendants. The status of plaintiffs being owners in possession was denied. The alleged construction raised by the plaintiffs was claimed to be unauthorised and without sanction from the M.C. Palwal. Defendants No.5 and 6 claimed themselves to be owner in possession of H.No.EP-2 bounded within dimensions as pleaded by them. The property is claimed to be 215 square yards bearing house tax property No.652 and 652-A. Defendants No.1 to 4 sold this property vide sale deed dated 30.11.2006.

[5]. Defendants submitted that they have never tried to encroach upon *Galīs* in question. Property of the plaintiffs is not adjoining to the plot No.EP-2 and, therefore, they cannot claim any right vis-a-vis the property which is owned and possessed by defendants.

[6]. Replication was not filed. From the pleadings of the parties,

trial Court framed the following issues:-

- “1. *Whether the plaintiffs are entitled to the decree of permanent injunction, as prayed for? OPP*
2. *Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
3. *Whether the plaintiffs have no locus standi/cause of action to file the present suit? OPP*
4. *Whether the plaintiffs are estopped from filing the present suit by their own acts and conduct? OPD*
5. *Relief.”*

[7]. An additional issue was also framed vide order dated 17.05.2012. The additional issue No.1-A reads as under:-

- “1A. *Whether the plaintiffs are entitled to the declaration that defendants No.5 and 6 are the owners in possession of land and building to the extent of 180 sq. yards only? OPP*

[8]. The very nature of the issue as framed above shows that how plaintiffs can claim declaration qua the ownership and possession of the defendants No.5 and 6 on the land and building to the extent of 180 square yards only. Onus to prove the aforesaid additional issue was on the plaintiffs.

[9]. In a way, ownership of defendants No.5 and 6 on the property in question to the extent of land measuring 180 square yards has to be admitted and this was the scope of the issue to further prove that the possession qua excess land measuring 35 square yards was not in the ownership and possession of defendants No.5 and 6.

[10]. Trial Court discussed issues No.1 and 1-A together and returned the findings against the plaintiffs to hold that they were required to stand on the strength of they own case and they have tried to mix up the issues. The plaintiffs have claimed that excess area to the tune of 35 square yards sold by the defendants belonged to them. No evidence has been led to show as to how this excess area went to their entitlement and how this area went in possession of the defendants?

[11]. Plaintiff No.1 has admitted in cross-examination that he never got the suit land demarcated vis-a-vis EP No.853 with EP No.2. The encroachment, if any could have been pointed out by way of lawful demarcation which was never done and on the other hand plaintiffs have been litigating on the issue that excess area has been sold to the defendants No.5 and 6. First of all plaintiffs were legally required to show that the allotted excess area belonged to them. Mere allotment of land measuring 80 square yards in favour of defendants No.1 to 4 is not sufficient to dislodge the defendants vis-a-vis the excess area found in their possession, particularly when plaintiffs have miserably failed to adduce link evidence to corroborate that the area so allotted to defendants No.1 to 4 which was further sold to defendants No.5 and 6, never included the additional area to the tune of 35 square yards.

[12]. Above all in order to stake claim qua this additional area and in order to show that defendants are in unauthorised

possession, the plaintiffs could have got the demarcation conducted through Competent Officer. This was not done and, therefore, trial Court on the basis of aforesaid facts held that the plaintiffs are not entitled to seek such permanent injunction. Even the site plan Ex.P-12 submitted by the plaintiffs has not been legally proved.

[13]. Mere exhibition of documents does not dispense with prove of its execution. Heavy onus was placed on the plaintiffs to prove the said site plan by way of examining draftsman or any other person connected with the preparation of site plan. The site plan remained unproved and there cannot be any legal sanctity attached to such document. In the absence of any demarcation and proof of placement of suit land by way of site plan, depicting factual situation of the properties of the plaintiffs and the defendants, no such finding of fact could have been recorded as claimed by the plaintiffs in the suit. Despite the onus of issue No.1 and 1-A on the plaintiffs they have led no evidence to show that the land in question has been usurped/encroached by the defendants.

[14]. Bare reading of additional issue No.1-A is suggestive of the fact that instead of plaintiffs seeking positive declaration in their favour they have sought contrary declaration to the effect that whether defendants No.5 and 6 are owners in possession of the suit land to the extent of 180 square yards only? Both the issues No.1 and 1-A to some extent can be read contrary to each other. Issue No.1, plaintiff could have adduced evidence to show that they are

entitled to decree for permanent injunction on the strength of their ownership qua the property in question and on the strength of unauthorised and illegal possession of defendants No.5 and 6 on the land in excess of 180 square yards so allotted to the defendants No.1 and 4 by the Rehabilitation Department.

[15]. Evidently, trial Court has decided the suit on factual details and dismissed the suit. Findings under issue No.1 and 1-A were returned against the plaintiffs and on the basis of findings recorded on such premise issues No.2 to 4 were also decided against the plaintiffs. Consequently suit was dismissed.

[16]. Lower appellate Court also dismissed the appeal by taking note of the fact that the claim of the plaintiffs had even become barred under Order 2 Rule 2 CPC and Order 23 Rule 1 CPC on the ground that the defendants cannot be asked to litigate twice on the same subject matter and on the same cause of action. The reference was made to Ex.D-1 copy of plaint of civil suit No.531 dated 22.11.2008 titled Prehlad Singh and others vs. Suraj Sharma and others and order dated 05.03.2009 (Ex.D-2) passed therein.

[17]. Perusal of aforesaid documents reveals that the plaintiffs had earlier filed the suit against defendants No.1 to 5 and some other persons in respect of property in question and claimed permanent and mandatory injunction similar to the kind as claimed herein. The said suit was got dismissed as withdrawn unconditionally on 05.03.2009 and thereafter this civil suit No.281 was filed on

19.08.2010. The cause of action being similar in terms of relief clause, the plaintiffs were within their right to claim this relief in the previous suit and, therefore, the cause is apparently barred under Order 2 Rule 2 CPC. Since the earlier suit was got dismissed as withdrawn without seeking liberty to file fresh on same cause of action, therefore, the present suit is also hit by order 23 Rule 1 CPC and is not maintainable in over all appreciation of decision even under issues No.2 to 4. The appellate Court did not feel like to interfere in the appeal and the same was dismissed accordingly.

[18]. I have heard the learned counsel for the appellant.

[19]. Learned counsel has tried to convince the Court on issue No.1-A which according to this Court is not sufficient to dislodge the defendants. Since no demarcation has been proved on record, nor any site plan has been proved by way of examining the draftsman and scribe of the same, therefore, Ex.P-2 even though exhibited on record is not sufficient to prove the proof of its execution. Placement of land cannot be ascertained for want of demarcation. The additional issue as framed does not advance the case of the plaintiffs in any manner.

[20]. The questions of law as framed by the appellant in para no.18 of the grounds of appeal do not arise. Question No.18(i) does not arise inasmuch as that no evidence has been led by the appellants to prove that the excess area as claimed by the plaintiffs is owned and possessed by the plaintiffs themselves. Plaintiffs have

to prove their case on the strength of evidence produced by them. Since there is no evidence of demarcation, nor in terms of site plan showing existing possession at the spot, no findings can be recorded under issue No.1, therefore this issue does not arise.

[21]. Second issue is equally wanting. Court cannot judicially notice of any document particularly Ex.P-12, if the execution of the same is not proved on record. Document even if exhibited does not dispense with proof of its execution. Reference can be made to **AIR 1971 (SC) 1865, Sait Tarajee Khimchand & ors. vs. V. Yelamarti Satyam and ors.**

[22]. In view of aforesaid no law worth consideration is involved in this appeal. This appeal is consequently dismissed.

October 09, 2015

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**(RAJ MOHAN SINGH)
JUDGE**