

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.2604 of 2014 (O & M)

Date of Decision: *November 03, 2015*

Ranjit Singh & another

..... APPELLANTS

VERSUS

Paramjit Singh & another

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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PRESENT: - Mr. Pritam Saini, Advocate, for the appellants.

Mr. R.N. Moudgil, Advocate, for the respondents.

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Jaspal Singh, J

1. The instant appeal has been preferred by the plaintiffs challenging judgment and decree dated January 17, 2014 passed by the trial court as well as judgment & decree dated March 12, 2014 by passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by the plaintiffs against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiffs for permanent injunction restraining the defendants from raising illegal construction over their land; from interfering into their peaceful possession; and for mandatory injunction directing the defendants to

demolish the illegal construction on the area measuring 8 feet X 45 feet, has been dismissed.

2. While assailing the impugned judgments & decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellants that both the courts below fell in error while holding that appellants have not been able to prove on record the area measuring 8 feet X 45 feet encroached upon by the defendants just on the ground that plaintiffs have not brought any rough site plan or scaled site plan showing the exact location of the property as well as the area alleged to have been encroached upon by the defendants. It was only due to this reason that appellants have attached the site plan alongwith grounds of appeal and have moved an application for permission to lead additional evidence (CM No.6125-C of 2014) to prove the exact location and the area encroached upon by the defendants. It is undisputed fact that the land of the defendants abuts the land owned by the appellants. The area, purchased by the appellants, has been clearly depicted in the sale deed as well as the site plan Ex.P2 whereas the defendants have also depicted the land owned by them and the rough site plan Ex.D3, so it can only be ascertained by way of demarcation or measurement whether the defendants – respondents have occupied any portion owned by the appellants. In the case in hand, the defendants have also failed to establish that they are owners in possession of the land, alleged to have been purchased by them. On the other hand, appellants have produced on record the sale deed(s) clearly depicting the area purchased by them. The non-appreciation of the documentary evidence produced by the appellants has resulted into mis-marriage of justice.

3. This court has given a deep thought to the aforesaid submissions made by learned counsel for the appellants but finds the same to be devoid of merits.

4. Admittedly, property of the defendants adjoins the property of the plaintiffs and there appears only a boundary dispute between the parties. So, in such a situation, it was obligatory upon the appellants – plaintiffs to prove the site plan of the existing position on the day of the institution of the suit. But, for the reasons best known to the appellants – plaintiffs, no site plan has been placed on record. Undoubtedly, sale deed Ex.P1 was accompanied by the site plan but it does not depict as to which portion measuring 8 feet X 45 feet has been allegedly encroached upon by the defendants.

5. As far as application (CM No.6125-C of 2014) under Order 41 Rule 27 CPC filed by the appellants – plaintiffs alongwith grounds of appeal is concerned, the same is not maintainable at this stage, especially in the circumstances that the site plan was a part of the sale deed on the basis of which the appellants – plaintiffs have claimed themselves to be owners of the property in suit. The appellants – plaintiffs were well aware of the site plan and the fact that the site plan is the basic document. Thus, it cannot be said that they could not place and prove on record the site plan after due diligence.

6. Moreover, there is cogent and convincing evidence brought on record by the defendants in the shape of sale deeds Ex.D1 and Ex.D2 as well as the site plan annexed therewith. Vide the above referred sale deeds, father and uncle of the defendants purchased the property with specific dimensions. They also placed on record the site plan Ex.D3 showing the

documents reveals that defendants are in possession of their share. Moreover, if there is any illegal encroachment over the property owned by the appellants – plaintiffs, that could only have been determined by way of appointment of Local Commissioner or by getting the land demarcated by the revenue officials. But, to the utter surprise, plaintiffs did not taken any initiative in this regard.

7. Apart from it, it would also be important to note that while filing the instant suit, the plaintiffs have concealed the material facts with regard to previous litigation in respect of the disputed property. Ram Kishan, father of the defendants and Bachan Singh, uncle of the defendants, purchased the land shown in site plan Ex.D3 from one Kartar Singh. Defendant – Paramjit Singh has also brought on record copy of plaint Ex.D4 i.e. civil suit captioned as Teja Singh vs. Ram Kishan whereby father of the appellants – plaintiffs sought the possession of the area measuring 10 feet X 22 feet from Ram Kishan, father of the defendants. Similarly, another suit titled Teja Singh vs. Ram Kishan (Ex.D5) was also filed by the plaintiffs seeking permanent injunction restraining Ram Kishan, father of the defendants, from interfering in their possession over the land reflected within letters ABCD in the site plan. The other suit was contested by Ram Kishan and copy of written statement filed by him in the suit for possession is Ex.D6. Ex.D7 is the copy of site plan filed in the previously instituted suit for permanent injunction but the appellants – defendants miserably failed to establish encroachment of possession. Thus, it can be said that the appellants – plaintiffs are also guilty of suppression of material facts from court while instating the instant suit before the trial court. There is no cogent and convincing evidence brought on record by the appellants – plaintiffs that

defendants have illegally encroached upon any part of the property belonging to them.

8. Thus, the impugned judgment & decree passed by the trial court and affirmed by the lower appellate court cannot be faulted with. This Court does not find any infirmity, illegality or impropriety in the impugned judgments & decrees to meddle with the findings recorded by the courts below. Accordingly, the instant appeal being devoid of merits is dismissed with no order as to costs.

November 03, 2015
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(Jaspal Singh)
Judge