

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

RSA No.4681 of 2014 (O&M).

Date of Decision: 06.10.2015.

Iqbal and others

....Appellants.

VERSUS

State of Haryana and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Surinder Dagar, Advocate for the appellants.

SNEH PRASHAR, J.

1. This was regular second appeal filed by appellants-plaintiffs Iqbal and others (hereinafter referred to as the “appellants”) impugning the judgment and decree dated 24.12.2013 passed in Civil Suit No.70 of 2012 by learned Civil Judge (Junior Division), Ferozepur Jhirka, dismissing the suit for permanent injunction filed by appellants against respondents-defendants State of Haryana and another (hereinafter referred to as the “respondents”) which was upheld by the first appellate Court vide judgment dated 31.03.2014.
2. Precisely, the facts are that appellant Iqbal and his two brothers by way of the instant suit claimed that they alongwith their brothers Khalid and Anwar Husain are lessees in possession of a plot comprised in Rect.

No.73, Killa No.17/1(0-9) measuring 0K-9M, situated within revenue estate of village Nagina, Tehsil Ferozepur Jhirka, District Mewat (hereinafter referred to as the “suit land”). The suit land was leased out to their father Kamru @ Kamruddin son of Umrao vide letter no.24/Lease-Urban/F.No.1135/90/941 dated 23.01.1991 and the possession was handed over to him. Kamru @ Kamruddin died on 15.04.2011 and ever since his death, the appellants, being his legal representatives, are in possession of the suit land as lessees. Their possession has been continuous and uninterrupted. Neither they had been ejected nor they have ever surrendered the possession till date. They had been using the suit land for gait-war purposes. However, the respondents being powerful persons are adamant to occupy the suit land forcibly and illegally and have started digging foundation for construction of the boundary on their land alongwith the suit land although they have no right, title or interest to do so.

The appellants prayed for a permanent injunctive order against the respondents restraining them from interfering in their possession or raising construction on any part of the suit land.

3. The respondents contested the suit. In their written statement, they raised preliminary objections with regard to locus standi of the appellants, maintainability of the suit and cause of action etc. They pleaded that they are owners in possession of land comprised in Rect. No.73, Killa No.14, 17/2, 23 and 24/1, Rect. No.84, Killa No.4, Khasra No.159 (hereinafter referred to as “land of respondents”) which is property of Primary Health Centre, Nagina. They requested the revenue authorities to

carry out demarcation of the suit land but when they visited the spot, the appellants raised altercation. Submitting that they are digging and constructing boundary wall on their own land, they prayed for dismissal of the suit.

4. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiffs are entitled to the decree for permanent injunction as prayed for? OPP.
- (2) Whether the plaintiffs have no locus standi and cause of action to file present suit? OPD.
- (3) Whether the suit of the plaintiffs is not maintainable in present form? OPD.
- (4) Whether the plaintiffs have concealed the true and material facts from the court? OPD.
- (5) Whether the suit of the plaintiffs is against law and facts, thus the same is liable to be dismissed? OPD.
- (6) Whether the suit is barred by limitation? OPD.
- (7) Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.
- (8) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court finding that the respondents were not raising construction on the land of the appellants, rather the boundary wall was being raised on the land of Primary Health Centre, Nagina, dismissed the suit of the plaintiffs.

7. Appellants preferred an appeal against the judgment and decree dated 24.12.2013 passed by learned trial Court which was dismissed by learned Additional District Judge, Mewat vide judgment and decree dated 31.03.2014.

8. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

9. The submissions made by Mr. Surinder Dagar, learned counsel representing the appellants have been considered.

10. The claim of the appellants is that they are lessees in possession of the suit land, whereas the plea of the respondents is that Primary Health Centre, Nagina is owner of the land of respondents. Apparently, the suit land of the appellants and the land of the respondents is different and is identified by separate Khasra numbers. As is apparent from the concurrent findings of learned trial Court and of learned first appellate Court, except for oral allegations of the appellants that the respondents intend to encroach upon the land in their possession by raising construction, no substantive and reliable evidence could be led by them to support their contention. The basis of apprehension of the appellants as noticed by learned trial Court in Para No.14 of the judgment is that towards northern, southern and eastern side of the land of the appellants is the land of the respondents. As per version of the appellants, the respondents have already raised construction on their land towards southern-eastern side and now they are raising boundary wall towards northern side joining the same with the wall on eastern side which will close the passage. The appellants had no

right to use the land of the respondents as passage.

11. The findings of learned trial Court and of first appellate Court are to the effect that before starting construction of the boundary wall on the northern side, the respondents had obtained demarcation of their land from the revenue authorities. Though the appellants disputed the demarcation report during evidence but they did not opt to seek appointment of a local commission/revenue official for demarcation of their land through the Court during pendency of the suit. Thus, from the rival contentions of the parties, it is clear that the respondents are constructing the boundary wall on their own land and the appellants had filed the suit only with a view to create hindrance in completion of construction.

There appears no ground for intervention in the concurrent findings of learned trial Court and appellate Court as there is no substantial question of law involved for decision in the case. The appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

06.10.2015
jitender