

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

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RSA No. 3043 of 2009 (O&M)

Date of Decision: January 06, 2016

Om Parkash and Ors.

-Appellants

Versus

State of Haryana and Ors.

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikram Sheoran, Advocate
for the appellants.
Mr. Siddharth Sanwaria, DAG, Haryana.

Mr. Ravi Malik, Advocate for
Mr. Sandeep Goyal, Advocate
for respondent No.2.

Mr. Harish Nain, Advocate for
Mr. Jagjeet Beniwal, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

{1}. Plaintiff is in second appeal against the concurrent judgments and decrees passed by the Courts below, thereby dismissing the suit of the plaintiff.

{2}. Plaintiffs-appellant filed suit for recovery of

₹2,50,000/- on account of damage and compensation for illegal demolition of house of the plaintiffs by the defendants.

{3}. Original plaintiff Ram Chander alleged that he being a blind man, appointed his son Ramphal as General Power of Attorney. Plaintiff is owner of Plot No.219 measuring 1 Kanal 10 Marlas situated in village Juglan. A house has been constructed over this plot about 3 years back by spending huge amount. Some persons of the village have illegally encroached upon Panchayat land and have constructed the house thereupon. After the demarcation report, encroachment of those persons were found on the Panchayat land. Gram Panchayat filed cases against those persons and Assistant Collector Ist Grade, Hisar vide order dated 07.02.1991 passed an order of ejectment against about 124 persons and that order has attained finality. The order was implemented by the Administration pursuant to directions issued by the High Court in a writ petition. Consequently, on the direction of the High Court, orders were implemented on 19.07.1997 by using force and house of illegal encroachers were demolished. Original plaintiff alleged that he never encroached upon any Panchayat land nor constructed any house on any of the Panchayat land. The name of the plaintiff was not amongst those persons against whom order of ejectment was passed by the competent authority. Infact, one

Ram Chander son of Diwana resident of the village had encroached upon Panchayat land by way of constructing a house. Assistant Collector Ist Grade, Hisar has passed an order of ejectment against him on 07.02.1991 alongwith other persons. Despite the fact that Ram Chander son of Diwana had encroached upon the Panchayat land, his house was not demolished by the defendants rather the house of the plaintiffs was demolished knowing fully well that plaintiff has not encroached upon the land of Panchayat and his house was situated in plot bearing Khasra No.219. Despite objection by the plaintiff and his family members at the time of demolition and showing that their house is not in the Panchayat land, their request was not acceded to by the defendants and they illegally demolished the house of the plaintiff. Thereafter, plaintiff approached the authorities but his request was not entertained. After issuing legal notice under Section 80 CPC upon the defendants for compensation to the tune of Rs.2.5 lacs, the suit came to be filed.

{4}. Suit has been resisted by the defendants on all counts. Defendants alleged that house of the plaintiff was never touched rather encroachment made on the house of Ram Chander son of Diwana, was got removed alongwith several other persons. Defendants also alleged that they have no

previous enmity with the plaintiff and his house was not demolished illegally as alleged. Only those encroachments were removed against whom order of ejectment was passed and the demolition activity was undertaken in pursuance to the order passed by the High Court. Defendants further alleged that Gram Panchayat sought ejectment of encroachers over the Panchayat land and filed proceedings in terms of Section 7 of Punjab Village Common Lands (Regulation) Act, 1961. An ejectment order was passed by the Assistant Collector, 1st Grade, Hisar on 07.02.1991. In execution of said order, warrants of possession were issued by the Court and for the purpose of implementation, unauthorized encroachments were removed and possession was handed over to the Sarpach of the Gram Panchayat. It is further claimed that a phirni is existing on the western side of the plot No.219 and Gram Panchayat is the owner of phirni. Plaintiff has constructed some portion of his house on the phirni which is in existence towards western side of plot No.219 about 3 years prior to filing of the suit. In this way, encroachment by the plaintiff has been suggested, thereafter on 19.07.1997 construction raised on the phirni of the village was got removed being illegal and unauthorized.

{5}. On the basis of pleadings of the parties, following issues were framed by the trial Court:-

{1}. Whether the plaintiff is entitled to recovery of Rs.2,50,000/- from the defendants on account of damage and compensation for illegal demolition of his house in question? OPP.

{2}. Whether the defendants knowingly, intentionally and malafide and illegally demolished the house of plaintiff and if so to what effect? OPP.

{3}. Whether the plaintiff is entitled to get interest @ 18% per annum and cost on the amount of damage and compensation claimed by him from the date of demolition till the date of realization? OPP.

{4}. Whether the suit of plaintiff is not maintainable? OPD.

{5}. Whether the plaintiff has no locus-standi? OPD.

{6}. Whether the civil court at Hisar has no jurisdiction to entertain the present suit? OPD.

{7}. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.

{8}. Whether the suit of the plaintiff is not

valued the proper court fees? OPD.

{9}. Whether the plaintiff has no cause of action? OPD.

{10}. Whether the plaintiff is not served legal notice u/s 80 CPC to the competent authority? OPD.

{11}. Whether the suit has not been filed by the competent person? OPD.

{12}. Relief.

{6}. Both the parties led evidence. Trial Court discussed issues No.1 to 3 and 3A jointly and held that plaintiff cannot take benefit of any weakness in the case of the defendants. The plaintiff sought to establish his case on the basis of contradiction in the written statement of the defendants to show that the house of the plaintiff was demolished. Written statement filed by defendant No.1 shows that the house of the plaintiff was not touched whereas defendant No.2 has claimed that since some part of the house of the plaintiff was situated in the land of phirni, therefore, it was demolished. Plaintiff has to stand on his own legs to claim redressal of the wrong done by the defendants. Plaintiff has also examined his neighbourer PW2 Chandi Ram in the context of demolition of his house by the Panchayat. The plaintiff has not established on record as to when his house was

constructed in plot No.219 or was part of it was in the area of phirni. Admittedly, defendants have demolished unauthorized construction of the persons in Panchayat land including phirni, therefore, it was incumbent upon the plaintiff to establish that his house was exclusively within Khasra No.219 and was not part of any land of phirni. The plaintiff while appearing as PW1 has admitted in his cross-examination that before construction of the house, he did not obtain any demarcation report from any competent authority.

{7}. Trial Court dismissed the suit vide judgment and decree dated 27.09.2006. Plaintiffs remained unsuccessful before the lower Appellate Court and their appeal was dismissed vide judgment and decree dated 26.11.2008.

{8}. Alongwith the grounds of appeal, learned counsel for the appellants framed following substantial questions of law:-

{a}. Whether the appellants are entitled for damage of Rs.2.50 lacs along with interest for the illegal demolition of their house at the house of respondents?

{b}. Whether keeping in view the contradictory statements of the respondents the plaintiff should be given benefit of reasonable doubt?

{c}. Whether non-reliance on the ample

evidence produced by the plaintiff that his house was situated within Khasra No.219, which was not listed in the 12 illegal houses of encroachment is against the principles of natural justice?

{d}. Whether the illegal demolition of house of the plaintiff/appellants is wrong, illegal, void ab initio and taking the false plea by respondents later is unjust?

{9}. I have heard learned counsel for the parties and have also perused the material on record.

{10}. Learned counsel for the appellants has contended that when the plaintiff approached the authorities for the purposes of obtaining demarcation, they refused to get it demarcated as is clear from the report Ex.P2. Admittedly, on the application, revenue authorities have refused to demarcate the land by stating that the site could not be located as is evident from the report made on this application. If, there was inaction on the part of the revenue officials, the plaintiff could have knocked the door of higher authorities including the Court. The fact remains that the construction raised by the plaintiff was without any demarcation; whether his house was situated in Khasra No.219 or in any portion of phirni remains a question

which is not answered by any evidence. Even the plaintiff did not get his land demarcated with the process of the Court. No such application has been moved before the Court to get any revenue officials appointed for the purpose of conducting demarcation. Plaintiff did not collect any such incriminating material, showing that the construction raised in plot No.219 was infact within the plot itself and no part of it was in the land of the phirni, therefore, the stand taken by the defendants that removal of encroachment drive was strictly confined to the Panchayat land, has not been rebutted by the plaintiff. Moreover, no enmity has come forth on record between plaintiff and the defendants. Since, the plaintiff has failed to get the demarcation report done, therefore, a presumption has to be drawn against him in terms of Section 144 (g) of the Indian Evidence Act that had he taken any such demarcation report, the same would have gone against him. The trial Court on the basis of aforesaid premise dismissed the suit and the same was upheld by the lower Appellate Court.

{11}. A question arises for determination is whether the house constructed by the plaintiff was infact situated in Khasra No.219 or not. The onus to prove this fact was on the plaintiff himself and he could not prove the same with reference to any evidence on record. Since, the plaintiff has come forward to say that no portion of house was constructed in the land of phirni,

therefore, the question as to whether construction being found on Panchayat land has to be put to the plaintiff by the Panchayat by issuing notice would be a fair test configuration. In the event of finding such a situation, defendants would have been called upon to explain as to when the construction was raised; whether such construction was on the land of phirni. The stand taken in the written statement is that a part of the house of the plaintiff was found in the land of phirni and the same was demolished. The question which is to be seen is whether such demolition was preceded by any order by the competent authority. Admittedly, the authorities vis-à-vis Additional Deputy Commissioner, Sub Divisional Magistrate and Tehsildar etc. were present when operation was carried out. The removal was made pursuant to the order passed by the High Court and on the basis of ejectment order passed by the authority under the Act. There is protection under the Act that when the act is done in good faith pursuant to the order passed by the competent authority, in the absence of any mens rea and malafide design of the defendants, the action cannot be brought to be questioned. No suit/prosecution/legal proceedings shall be instituted against the State or against the person in authority when the act done or intended to be done was in good faith in pursuance to the provisions of the Act. The pleadings of the

plaintiff are also discrepant vis-à-vis the date of construction. No evidence has come forth as to what amount has been incurred by the plaintiff on such construction. There is no evidence on record to show extent of damage caused to the house; how much construction was existing in Khasra No.219 and how much construction was existing in the land of phirni. The statement of PW1 pointed out that in the site plan, as many as 10 rooms were shown constructed but while appearing as PW1, only three rooms were stated. Even the photographs on record have been taken in such a manner that it cannot be ascertained as to how much portion of the house has been demolished. Since the demolished house could not be proved whether it existed in Khasra/Plot No.219 or in the land of the phirni, therefore, the statement of the plaintiff as PW1 cannot be given definite meaning in the construction of demolished area. Therefore, the demolition done by the authority in good faith in respect of part of the construction existed on the land of phirni cannot be held to be an act of malafide unless and until it is proved on record that the drive was undertaken by the authorities with an intention to cause damage to the plaintiffs. In the absence of any conclusive proof of damage, the compensation cannot be quantified and could not be assessed vis-à-vis the alleged demolition whether existed in plot No.219 or in the area

belonging to land of phirni. Since, the plaintiffs have failed to prove their case, therefore, any weakness in the case of defendants cannot be looked into for the purposes of granting any relief to the plaintiffs on this unfounding assumption. The question of law as formulated in the grounds of appeal do not arise at all in as much as that question No. (a) is a pure question of fact and cannot be assessed for want of extent of damage caused to the plaintiffs house. Coupled with the situation, such an encroachment was existing in the land of phirni or otherwise. Question No. (b) relates to the stand taken by the defendants in the written statement. Even if the written statement is discrepant, no benefit can be taken by the plaintiffs as the plaintiffs have to stand on their own legs. No material has been adduced by the plaintiff to show that the demolition of house has been done in respect of construction raised in Khasra No.219 only. The stand of the defendants that the demolition has taken place in respect of encroachment made by the plaintiff in the land of phirni has nothing to do with the claim of the plaintiff in the present case. Question No. (c) even if the name of the plaintiff was not shown in the list of 124 illegal encroachers of the Panchayat land, still the action taken by the authorities in good faith on finding portion of encroachment in phirni land and demolition thereof, cannot be attributed to be a malafide design at the instance of

the defendants, particularly when no such evidence of enmity between the parties has come forth on record. The alleged damage to the house is not capable of computing exact loss caused to the house of the plaintiff in the absence of any evidence adduced by him. No demarcation has been got conducted by the plaintiff nor any process was initiated, seeking to get the property demarcated with process of the Court. Since, the plaintiff has failed to lead cogent evidence to prove his case, weakness in the case of the defendants cannot be made subject matter of such assessment which cannot be legally endorsed. Question No. (d) is a question of fact only and has necessary answer in the discussion made in the preceding paras.

{12}. Looking into the nature of controversy and evidence led by the plaintiff on record, no exception can be made to the findings recorded by the Courts below. It has to be held that plaintiff has not led any such cogent evidence, warranting any interference at the hands of this Court in this Regular Second Appeal. Consequently, this appeal is totally devoid of merits and is hereby dismissed.

January 06, 2016

Jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**