

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2224 of 2012(O&M)

Date of Decision: 28.1.2016

Rajinder Singh

---Appellant

versus

Naranjan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ashok Giri, Advocate
for the appellant**

**Mr. M.S.Dhami, Advocate
for respondents No. 1 and 2**

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

Rekha Mittal, J.

The present appeal has been directed against the judgment and decree dated 23.2.2012 passed by the District Judge, SBS Nagar whereby the appeal preferred by the respondents against the judgment and decree dated 14.10.2010 passed by the Additional Civil Judge (Senior Division), Balachaur was accepted and the judgment passed by the trial court dismissing suit of the plaintiffs was set aside and their suit was decreed for possession qua land measuring 2 kanals 13 marlas.

The facts relevant for disposal of the present appeal are that

respondents/plaintiffs filed a suit for possession of land measuring 3 kanals, detailed in head note of the plaint on the premise that the defendants whose land is situated on the Western side of the land of the plaintiffs/respondents have taken forcible possession of land marked in the site plan 'ABCDE' in May 2006.

The appellant and his co-defendant filed the written statement denying the averments that they are in illegal possession of land belonging to the respondents/plaintiffs.

The controversy between the parties led to framing of following issues by the learned trial court:-

1. Whether plaintiffs are entitled to possession of land measuring 3 kanals, fully detailed in head note of plaint, as prayed?OPP
2. Whether plaintiffs are entitled to relief of permanent injunction, as prayed for? OPP
3. Whether plaintiffs have not approached this Court with clean hands and are guilty of suppressing true and material facts from the Court?OPD
4. Whether plaintiffs are estopped from filing present suit?OPD
5. Relief

The trial court permitted the parties to lead evidence in support of their respective contentions. On due consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record, report of the local commission appointed by the court vide order dated 16.8.2011 and the submissions made by counsel for the parties, the learned trial court

determined issues Nos. 1 and 2 against the respondents and as a result, suit filed by the respondents was ordered to be dismissed.

Feeling aggrieved against the judgment and decree passed by the trial court, the respondents/plaintiffs preferred the appeal which came to be decided by the District Judge, SBS Nagar and claim of the respondents was partly allowed by holding that the defendants including the appellant are in unlawful possession of land measuring 2 kanals 13 marlas and they are liable to deliver possession of the said land to the respondents.

Feeling aggrieved from the judgment passed by the court in appeal, the present appeal has been preferred by one of the defendants namely Rajinder Singh.

The sole submission made by counsel for the appellant is that the learned trial court rightly dismissed claim of the respondents as they have failed to substantiate their plea that the defendants are in illegal occupation of their land. It is further argued that as per case set up by the respondents, the defendants are in illegal possession of land measuring 3 kanals but their plea stands falsified and belied even in view of the report submitted by the local commission appointed by the court in appeal as according to the report, land measuring 2 kanals 13 marlas of the respondents-plaintiffs was found in possession of the defendants.

Counsel for the respondents has supported the judgment passed by the appellate court with the submissions that an error committed by the trial court was rectified by the court in appeal by appointing another commission to conduct demarcation at the spot in compliance of the instructions issued by the Financial Commissioner as well as rules of Punjab

and Haryana High Court. It is further argued that the court has power to mould the relief in view of materials on record, therefore, claim of the respondents could not be rejected merely because the defendants have been found in illegal possession of 2 kanals 13 marlas of land viz-a-viz 3 kanals, claimed by the respondents/plaintiffs.

I have heard counsel for the parties and perused the records.

The learned trial court dismissed the suit of the respondents as the court refused to rely upon the report of the local commission appointed vide order dated 16.8.2011. It was held that demarcation conducted by the local commission is not in accordance with law, therefore, the same cannot be relied upon. The learned trial court failed to consider that if the commission has not conducted the demarcation in accordance with instructions issued by the Financial Commissioner or the High Court Rules and Orders, either the same commission could be directed to conduct demarcation afresh or another commission can be appointed to do the needful.

The appellate court chose to appoint another commission (a revenue official) to conduct demarcation at the spot. The said commission submitted his detailed report and it was found that the defendants are in possession of 2 kanals 13 marlas of land belonging to the plaintiffs. Counsel for the appellant has failed to point out any error much less illegality in the report of the commission to contend that the said report cannot form the basis for accepting claim of the respondents, on any count whatever. The appellate court has appreciated the report of the local commission in right perspective, therefore, no infirmity much less illegality

can be found in the findings of the appellate court that the defendants are in illegal possession of land measuring 2 kanals 13 marlas belonging to the respondents and thus the respondents are entitled to recover possession of the said land from the defendants.

No other point has been raised.

In view of what has been discussed hereinabove, neither any substantial question of law arises for adjudication nor there is any infirmity in the judgment passed by the court in appeal. As a result, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

28.1.2016

PARAMJIT