

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

**R.S.A No.1169 of 2016 (O&M)
Date of decision :18.10.2016**

Haryana Urban Development Authority

..... Appellant

Versus

Rohtash Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Vikrant Pamboo, Advocate
for the appellant.

DARSHAN SINGH,J

CM No. 3286-C of 2016

This application has been moved under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay of 14 days in re-filing the appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 14 days in re-filing the present appeal is hereby condoned.

R.S.A No. 1169 of 2016 (O&M)

The present appeal has been preferred against the judgment and decree dated 28.09.2015 passed by the learned Additional District Judge, Faridabad, whereby the appeal filed by appellant-Haryana Urban Development Authority, Sector 12, Faridabad (for short HUDA) against the judgment and decree dated 15.11.2014 passed by the learned Civil Judge (Jr. Division), Faridabad, has been dismissed.

2. Plaintiff-respondent-Rohtash Kumar filed the suit for permanent injunction restraining the appellant-defendant from dispossessing the plaintiff from the suit property shown with letters 'ABCDEFGH' in the site plan attached with the plaint and further restraining them from demolishing the construction existing thereupon.

3. As per the case of the plaintiff-respondent, he has been allotted 1000 Sq. yards land out of khewat no. 410, khata no. 448, khasra no.333 min (2-0) Gair Mumkin Kabristan situated in the revenue estate of Faridabad by the Punjab Wakf Board vide allotment dated 03.03.1983 i.e. the suit property. After obtaining the possession thereof, he constructed the boundary wall and also raised the construction of tin shed, room etc. Defendants have no concern therewith. Defendants earlier wanted to dispossess him. He brought a suit. The same was dismissed by the learned Civil judge (Jr. Division), Faridabad. He preferred the appeal which was accepted by the learned Additional District Judge, Faridabad vide judgment and decree dated 01.10.2007. Plaintiff has not encroached upon any portion of khasra no.332. They have not got the land demarcated. Still they are trying to dispossess the plaintiff. Hence the suit.

4. Appellant-defendant contested the suit on the grounds *inter alia* that the earlier suit filed by the plaintiff-respondent was dismissed by the Civil Court vide judgment dated 28.10.2006. However, his appeal was accepted by the learned Additional District Judge, Faridabad and he was granted injunction qua the land allotted to him. It was provided in the said judgment that in case of any encroachment over khasra no. 332, the defendant shall be at liberty to proceed against him to

remove the said encroachment. It is further pleaded that the plaintiff has not come to the Court with clean hands as he was found to be in possession of land comprised of khasra no. 332 and is liable to be removed there from. It is further pleaded that defendants have got khasra no. 332 demarcated by the Patwari in the presence of plaintiff. As per the report dated 15.04.2009 plaintiff had illegally and unlawfully encroached upon the area measuring 128 Sq. yards. He has raised construction thereupon. Khasra no. 332 was acquired by the State Government vide Award No. 11 dated 12.01.1973 and appellants-defendants have become the absolute owner thereof. It is further pleaded that plaintiff is liable to be ejected there from and appellant-defendants are competent to remove his encroachment on the land measuring 128 Sq. yards. With these pleas, appellants-defendants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for a decree of permanent injunction, a prayed for?OPP
2. Whether the present suit is not maintainable in the present form?OPD
3. Whether the plaintiff had no locus standi and cause of action to file the present suit?OPD
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
5. Whether the suit of the plaintiff is barred by the principle of res judicata?OPD
6. Whether the plaintiff has not come to the Court with clean hands?OPD
7. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the suit of the plaintiff-respondent was decreed by the learned trial Court vide impugned judgment and decree dated 15.11.2014.

7. Aggrieved with the aforesaid judgment and decree dated 15.11.2014, appellant-defendant preferred the appeal. The same was dismissed by the learned Additional District Judge, Faridabad vide impugned judgment and decree dated 28.09.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Vikrant Pamboo, Advocate, learned counsel for the appellant and have carefully gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the present suit is barred by the principle of *res judicata*. He contended that the plaintiff has earlier filed the suit with respect to this very land. His suit was dismissed by the learned trial Court and appeal was allowed with some modification. He contended that the plaintiff has no fresh cause of action. So, the second suit on the same cause of action was not maintainable. It is also barred by the principle of *res judicata*. He further contended that even otherwise it is proved from the material on record that the plaintiff-respondent has encroached upon the land measuring 128 Sq. yards comprised of khasra no. 332 owned by the appellant. The demarcation of the land was conducted by the Patwari in the presence of plaintiff and he has given the report dated 15.04.2009. Thus, he contended that as the plaintiff has encroached upon the land owned by the defendants, he has no right of injunction and appellants have every right to remove the encroachment.

10. I have duly considered the aforesaid contentions.

11. As per the case of the plaintiff, he has been allotted the land measuring 1000 Sq. yards consisting of khasra no.333 by the Punjab

Wakf Board vide allotment letter dated 03.03.1983 and since then he is in continuous possession thereof and has also raised the construction thereupon. The factum regarding the allotment of the said land to the plaintiff out of khasra no.333 by the Punjab Wakf Board has been admitted by DW-1 Narinder Singh Patwari. Appellants-defendants have alleged that plaintiff has encroached upon the land measuring 128 Sq. yards out of khasra no.332 owned by them and as a result thereof notice dated 17.04.2009 was issued to the plaintiff to remove the encroachment. So, the sole question involved in the present case is as to whether the property in dispute shown with letters 'ABCDEFGH' in the site plan attached with the plaint is part of khasra no.333 and the plaintiff-respondent has encroached upon the land measuring 128 Sq. yards out of khasra no.332.

12. Appellant-defendants are relying upon the demarcation report dated 15.04.2009 prepared by its Patwari wherein the plaintiff has been shown to be in unauthorized possession of 128 Sq. yards of land of the appellant. Learned trial Court has observed that the said demarcation neither took place in the presence of plaintiff nor any notice thereof was given to him.

13. In order to resolve the controversy, the learned trial Court has appointed the Local Commissioner to demarcate the land comprised of khasra no.332 and 333. The said Local Commissioner has submitted the report Ex.P-8. The demarcation was carried out by the Local Commissioner in the presence of Satbir Singh Jr. Engineer HUDA and DW-1 Narinder Singh Patwari HUDA as well as in the presence of the

son of plaintiff. The Local Commissioner has categorically reported that the plaintiff has not encroached upon any portion of khasra no.332 as alleged by the defendants. It was further reported that appellant-HUDA has constructed a road on khasra no.332. The possession of the plaintiff has been shown over the portion of the land comprised of khasra no.333. Appellant-defendant has not filed any objection to the report of the Local Commissioner. Thus, from the aforesaid report of the Local Commissioner appointed by the Court, it was established that the plaintiff is in possession of the land comprised of khasra no.333 which was allotted to him by the Punjab Wakf Board and he has not made any encroachment over any portion of khasra no.332 owned by the appellant-defendant.

14. There is no question of applicability of principle of *res judicata* to the present suit filed by the plaintiff-respondent as after the alleged demarcation dated 15.04.2009, the appellant-defendant had issued the fresh notice dated 17.04.2009 to the plaintiff which furnished a fresh cause of action to the plaintiff to file the present suit.

15. Thus, as the suit premises is the part of khasra no.333 which has been allotted to the plaintiff by the Punjab Wakf Board and he has not made any encroachment on any portion of the land comprised of khasra no.332 owned by the appellant-defendant, so plaintiff-respondent was certainly entitled for injunction.

16. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

17. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

October 18, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No