

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 1625 of 2015 (O&M)
Date of Decision: January 28, 2016

Jaspal Singh

... Appellant

Versus

Raj Kumar and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. K.S. Jetley, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 01.05.2013 passed by learned Civil Judge (Junior Division), Dera Bassi, whereby suit filed by the appellant/plaintiff for permanent injunction has been dismissed, as well as, against the judgment and decree dated 19.12.2014 passed by learned Additional District Judge, SAS Nagar (Mohali), whereby appeal preferred by the appellant/plaintiff has also been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of

the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for permanent injunction on the ground that he and his brothers are owners in possession of the suit property as detailed in the headnote of the plaint and the same is being used as *Baithak* and *Bara* for placing *rori*, tethering cattle and other miscellaneous purposes. Dek trees and other trees of the plaintiff are also standing in the property in question. The defendants are having their site adjoining to the property in question. The defendants without any right, title and interest are bent upon to encroach upon the suit property, by raising construction over there. The plaintiff requested the defendants several times not to interfere in his possession over the suit property, but defendants paid no heed and refused to accede to the request of the plaintiff. Hence, suit was filed.

Upon notice, defendants appeared and filed their written statement and took preliminary objections with regard to locus standi; suppression of material facts etc. It was averred that defendants no.1 and 2 are having their house and compound towards southern side of plaintiff's property. The said house and compound of defendants no.1 and 2 is shown with points A.B.C.D.E.F.G.H.I.J. in the site plan, out of which site shown as A.B.C.D is in possession of defendant no.2 where there are small Dek trees and defendant no.2 has erected fencing towards western side with the help of tikhars as shown by points A.D. As far as, defendant no.1 is concerned, his house and compound is shown by points B.C.E.F.G.H.I.. Both the defendants are in possession over the site from time immemorial. As far as, land of the plaintiff is concerned, that is towards northern side having width

of 17 feet 6 inch towards western side just adjacent to the street. Defendant nos. 3 to 5 in their written statement averred that defendants no. 4 and 5 are having open site in the abadi of village shown as ABCD in the site plan.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 2. Whether suit is not maintainable in the present form? OPD*
- 3. Whether plaintiff has not come to the court with clean hands and has suppressed the material facts from the court? OPD*
- 4. Whether plaintiff has got no locus standi to file the present suit? OPD*
- 5. Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 01.05.2013. Against that, plaintiff preferred an appeal, which has also been dismissed by the lower appellate Court vide judgment and decree dated 19.12.2014. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 4 of grounds of appeal, arise for consideration in this second appeal:-

- “a) As to whether the ld. Courts below are justified in relying upon the measurements of the land submitted by the respondents through documents Ex.D-2 & Ex.D-3 by giving measurement of the land from pucca burji allegedly fixed by the Gram Panchayat in the abadi property.*
- b) As to whether any measurement from alleged pucca burji is*

tenable in the abadi property within lal lakeer of a village.

- c) *As to whether the evasive report Ex.D-2 & D-3 prepared by a Draftsman while sitting in Tehsil office in the absence of the appellant is not detrimental to the interests of the appellant.*
- d) *As to whether the respondents have discharged their onus to prove their case as envisaged under Sections 101 & 102 of the Evidence Act for claiming ownership over the property within abadi deh.*
- e) *As to whether the ld. courts below have erred in appreciating the evidence on record while rendering the impugned judgments.*
- f) *As to whether the impugned judgments passed by the ld. Courts below are perverse in law.”*

Learned counsel for the appellant contended that both the courts below have erred in not properly appreciating the evidence on record. The judgments and decrees of both the Courts below are based on conjectures and surmises. Therefore, the impugned judgments and decrees are liable to be set aside. Learned counsel further contended that the appellant and his brothers are in possession of the suit property.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

Both the Courts below, after appreciating the evidence on record, have recorded findings of fact with regard to the measurement of the property of the plaintiff. existence of passage. The Court of first instance recorded the following findings:-

“14. It is apparent that the ownership of the plaintiff over the suit property is not denied. The only issue is regarding the exact dimensions of the property of the plaintiff. Whereas the

plaintiff alleges the dimension of the property to be 188 ft x 44 ft, the defendant alleges that the width of the property of the plaintiff is, in reality, 17 ft 6 inch. Even the length of the property of the plaintiff is not denied. Therefore, the short controversy is regarding the width of the property in dispute.

15. Regarding the width of the property, it is worth seeing that all the plaintiff witnesses have admitted the site plan Ex.D2 and Ex.D3 adduced by the defendants. Whereas Ex.D3 depicts the property of the defendants and the plaintiff, Ex.D2 shows the property of the plaintiff and his other neighbours.

16. The admitted factual position is that the land of the plaintiff is abutted on the northern edge by the property of Sheo Ram and others, whereas on the southern end, it is abutted by the property of defendants. The site plan of the plaintiff Ex.P1 shows the dimensions of his property as alleged by him. However, it does not refer to the dimensions of the property of his neighbours. Therefore, it is found that the site plan is an evasive one and cannot be relied upon in favour of the plaintiff.

17. On the other hand, the defendants' site plans are very elaborate and they depict not only the dimensions of the property of the plaintiff and the defendants, but also of the other properties. The plaintiff himself has admitted the neighbours of his property are correctly depicted in the site plan of the defendants. Even though he has not admitted the dimensions of the adjoining properties as depicted in site plan Ex.D2 and Ex.D3, yet his admission on the points noted above is quite relevant.

18. It is further to be that the plaintiff has not got the property demarcated from the revenue authorities. There is no official record to show that the dimension of the property in dispute is as per the allegations of the plaintiff. The plaintiff was under an obligation to prove that the suit property bears

the dimensions as alleged by him in his plan. However, he has failed to do so. It is the settled law that the plaintiff has to stand on his own legs. The plaintiff cannot put the onus of his own case upon the defendants. Therefore, the failure of the plaintiff to prove the dimensions of his property by showing the dimensions of the adjoining property and his further failure in getting the land demarcated goes to the roots of his case.

19. *The suit land is within the abadi area and does not have revenue record. No demarcation of the suit property having been conducted, there is no documentary evidence to determine the dimensions of the suit property. In the absence of the documentary evidence, the oral evidence remains the best evidence. The oral evidence has tilted the entire scales in favour of the defendants and against the plaintiff.*

20. *It is to be seen that the defendants allege the existence of pacca burji at the northern corner of land of the plaintiff. All the defendants' witnesses have consistently deposed that the pacca burji exists at the northern corner of the land of the plaintiff. All the plaintiff's witnesses have given evasive replies to existence of such a burji. Therefore, the existence of the burji is established, the defendants having discharged their onus in this respect, and the reply by the plaintiff being vague and unsubstantiated.*

21. *The case of the defendants, as depicted from the site plan Ex.D2 and Ex.D3 is that the distance of the northern end of the property of the defendants from the said pacca burji is 17 feet 6 inches, which is the breadth of the land of the plaintiff. There is no reply to this aspect by either the plaintiff himself or by any of the witnesses. The plaintiff has himself suffered that there is no other land between his land and that of the defendants. Therefore, it is found that there being evasive replies on this aspect by the witnesses of the plaintiff, the stand of the defendants stands duly proved. The distance*

from the pucca burji as alleged by the defendants is established from the corroborative testimonies of the defendants' witnesses. Therefore, the width of the land of the plaintiff is found to be 17 feet 6 inches.”

Said findings have been affirmed by the lower appellate Court.

Concurrent findings of fact have been recorded by both the Courts below. Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. It is settled law that this Court cannot interfere in the findings of fact recorded by the Courts below on appreciation of evidence brought on record, unless the findings are perverse. No perversity has been pointed out by the learned counsel for the appellant. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine

January 28, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge