

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

**R.S.A. No.1834 of 2015 (O&M)**

Date of decision: 06.01.2016

Balbir Kaur

...Appellant

Versus

Pal Singh and anr.

...Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Deepak Sharma, Advocate for the appellant.

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**Jitendra Chauhan, J.**

**CM Nos.4930-4931-C of 2015**

For the reasons contained in the applications, same are allowed and delay of 42 days in re-filing and 20 days in filing the appeal is condoned.

**Main Case**

This regular second appeal is directed against the judgment and decree dated 07.08.2014, passed by the learned Additional District Judge, Ambala, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 10.09.2012, passed by the learned Civil Judge, Sr. Divn., Ambala, (for short, the 'trial Court'), has been dismissed.

The brief facts of the case are that the appellant filed the suit for mandatory injunction claiming herself to be the absolute owner in possession of the property measuring 190-2/3 Sq. yard, situated in village Kanwla, Tehsil and District Ambala (hereinafter referred as 'suit land'). The appellant, vide sale deed No.2396 dated 30.06.1987, had purchased the suit land from Bishan Singh. After having purchased the plot, she raised construction over the same and it was averred that sometime thereafter, the respondent No.1, Pal Singh threatened her that he would forcibly raise construction over the property in question. Accordingly, the appellant filed a civil suit on 05.02.1996 against respondent No.1, which was subsequently dismissed by the learned Civil Judge, Junior Division, Ambala, vide judgment and decree dated 16.01.2008.

Feeling aggrieved, an appeal was preferred against the judgment and decree, but the same was dismissed as withdrawn by the learned Additional District Judge, Ambala on 26.03.2008 with a liberty to file afresh, if so warranted.

It is averred that the respondents have encroached upon the disputed land, reflected on record in letters ABCDEF as marked in the site plan. The defendants-respondents took preliminary objections that the suit preferred by the appellant was not maintainable as the matter directly and substantially was in issue and had already been decided in an earlier suit on 16.01.2008, therefore, the suit was hit by principle of res-judicata. The defendants-respondents have denied that the plaintiff-

appellant is the absolute owner in possession of the land and stated that vide transfer deed dated 02.02.1996, the suit land was transferred to them by its owners namely, Bahadur Singh, Niranjana Singh, Bachittar Singh and Gurnam Singh etc. and since then they are in continuous possession of the said land. The following issues were framed by the trial court:-

1. Whether the plaintiff is owners in possession of the suit property as mentioned in the plaint? OPP.
2. If issue No.1 is proved, whether the plaintiff is entitled to mandatory injunction as prayed for? OPP.
3. Whether the suit is barred by principle of res-judicata? OPP.
4. Whether the plaintiff has concealed the material facts from the Court? OPD.
5. Whether the suit is bad for mis-joinder of necessary parties? OPD.
6. Relief.

While recording the finding on issue Nos.1 and 2, the trial Court recorded that as per the case of the plaintiff-appellant, the suit land measuring 190-2/3 Sq. yard, owned by Bishan Singh, was purchased by her vide sale deed dated 30.06.1987 (Ex. P1) and this fact was not disputed by the defendants-respondents. However, it has come on record vide Ex. P1 i.e. copy of sale deed dated 30.06.1987 and the site plan Ex. P3 filed along with suit that the land marked as ABCDEF with regard to which the ownership was claimed by the appellant, was encroached upon by the defendants-respondents. Whereas the stand of the defendants was

that disputed land was given to them by the original owner i.e. Bahadur Singh, Niranjana Singh, Bachittar Singh and Gurnam Singh etc. through relinquishment deed dated 02.02.1996. The trial Court has specifically noticed that description/details of the land i.e. 26x66', claimed to be purchased by the appellant from one, Bishan Singh is different from that as specified in site plan Ex. P3, filed along with the suit. Therefore, the trial Court observed that it is not clear with respect to which property the relief of injunction had been sought by the plaintiff-appellant. Accordingly, the suit filed by the appellant was dismissed. The learned first appellate Court, after scanning the entire record on file, upheld the findings recorded by the trial Court qua dimensions of the disputed property as mentioned in the site plan Ex. P3 and the description given in the sale deed Ex. P1. Thus the sale deed Ex. P1 being irreconcilable, the appeal preferred by the appellant was dismissed.

The learned counsel submits that the Courts below have failed to appreciate the fact that the appellant is the owner in possession of the suit property, which she had purchased from Bishan Singh, however, the same was illegally encroached upon by respondent No.1-Pal Singh. He further states that the appellant has proved on record the sale deed through which she had purchased the suit land and the same is not disputed by the respondents. No other point has been raised.

Though, the sale deed dated 30.06.1987, entered into between the appellant and Bishan Singh is not in dispute, but the

description/details of the land given in the sale deed are totally at variance from those specified in site plan Ex. P3, which was filed along with the suit. In sale deed Ex.P1, vide which the plaintiff-appellant purchased the suit property, description of the suit land has been mentioned as under:-

East side: 26' house of Hari Chand

West side: 26' house of Gurbax and Jogindero

North side: 66' street

South side: 66' street

In the site plan attached with the plaint the description of the plot purchased by the plaintiff-appellant has been described differently as follows:-

East side: 63'-3" house of Hari Chand

West side: 61' house of defendants-respondents

North side: 21'-3" Atta Chakki

South side: 26' street

In addition to above, the learned counsel for the appellant has failed to point out any cogent evidence on record with regard to encroachment upon the land, which is subject matter of the sale deed executed between the appellant and Bishan Singh, by the respondent. The documents Ex.P1 and Ex.P3, filed by the appellant herself, are irreconcilable as is clear from the record of the trial Court. The matter had earlier been dealt with by a competent Court and finality had been

achieved, which was challenged, but the same was dismissed as withdrawn, wherein the parties, the disputed property and the issue involved for determination were the same. Therefore, this Court does not find any fault with the findings recorded by the learned first appellate Court that the same is hit by the principle of res-judicata. The learned counsel has failed to bring any circumstance to the notice of the Court that any law point much less substantial point is involved in the present appeal or the view taken by the trial court as well as the first appellate Court suffers from any illegality or perversity. Though there is a delay of 20 days in presenting the appeal, yet, this Court has minutely overhauled the entire facts and circumstances of the case along with its record and is of the view that no substantial question of law has arisen for adjudication in this appeal. Accordingly, no interference is called for in the well reasoned judgments or orders passed by the Courts below.

Dismissed in limine.

**06.01.2016**

ashok

**(JITENDRA CHAUHAN)**  
**JUDGE**