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

RSA-3603-2016 (O&M)

Date of decision : 04.12.2018

Atma Singh

... Appellant

Versus

Surinderpal Sood and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sartej Singh Narula, Advocate
for the appellant.

AMIT RAWAL, J.

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the plaintiff seeking permanent injunction restraining the defendants from interference and dispossession in respect of land measuring 13 bigha 2 biswas comprised in Khewat No.301, Khatauni No.400, 401, 402, 403, 404, 405, Khasra Nos.1053 min (6-11), 1053 min (2-12), 1053 min (0-10), 1053 min (1-1), 1053 min (1-1), 1053 min (1-2), as per jamabandi for the year 2001-02, situated in Village Arraichan, Tehsil Payal, District Ludhiana and further from creating any obstructions, hurdles, hindrances in the peaceful construction work of the plaintiff, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

It was alleged that Teja Singh, Bhupinder Singh sons of Ishar Singh son of Shyam Singh, Jasmail Singh, Gurcharan Singh and Sarbjit

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Singh, brothers of Teja Singh and nephews of plaintiff, were owners in possession of the suit land. The possession of the plaintiff of the suit land had been peaceful, continuous, uninterrupted since time memorial. The defendants had no right, title and interest. There is a street leading from G.T. Road to locality which was used by inhabitants of the locality since long. Defendant No.3, Ajay Pal Soni, was owner of the suit property towards western side of property of the plaintiff and towards eastern side, there was a street in between the property of plaintiff and Telephone Exchange, Doraha. Defendant No.1, who was the acting President of Municipal Council, Doraha, had an influence over the Municipal Council and defendant No.4, Darshan Singh, had been helping the defendant No.3. In order to give benefit to defendant No.3, defendant No.1 & 2 started extending threats to interfere, dispossess the plaintiff, much less, attempted to encroach the property of the plaintiff to construct/pave the bricks on the land belonging to the plaintiff. The plaintiff and Teja Singh etc., filed a civil suit titled as "Atma Singh and others V/s Surjit Singh Mangat and others", wherein Kamal Krishan, Clerk, M.C. Doraha, suffered a statement that M.C. Doraha was making the street and was not on the land of the plaintiff bearing Khasra No.1053. In view of that statement, the suit was dismissed as withdrawn, thus, the defendant-M.C. Doraha and its Executive Officer on 02.08.2005, in sheer violation, disobedience and breach of the order tried to dig the earth/foundations forcibly and illegally and in such circumstances, the plaintiff filed a petition under Section 39 Rule 2-A CPC. In the presence of respectables gathered at the spot where it was orally settled that the plaintiff would give some land out of his ownership for the street and the same was done. Thereafter, M.C. Doraha, completed the

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street as shown in the site plan towards eastern side of the property, but the officers of M.C. Doraha, became inimical and attempted to stop the construction, which the plaintiff started on 08.07.2006. The defendants allegedly moved a complaint against the plaintiff to the police.

Defendant Nos.1 and 2, in their separate written statement, opposed the suit by taking objection qua maintainability of the suit. It was stated that the suit was barred by the principles of *res judicata* and the defendant committee was paving the *rasta* by dry bricks in Khasra no.1052 and 951, which was not in ownership of the plaintiff, which fact was evident from the demarcation report and the work of earth-filling had already done and the work was in progress. In such circumstances, the previous suit of the plaintiff was dismissed as withdrawn. The oral settlement as coined by the plaintiff, in the previous round of litigation, was emphatically denied. At the stage, the defendant Nos.1 and 2 were proceeded *ex parte* and the case was fixed for consideration. An application was filed for setting aside the *ex parte* proceedings, which was dismissed in default vide order dated 31.07.2014, but on the statement of counsel for the plaintiff, defendant Nos.1 and 2 were allowed to join the proceedings and *ex parte* proceedings were set aside.

The defendant No.3 opposed the suit by taking the plea that previously plaintiff and other persons, were co-owners of land measuring 13B-02B comprised in khewat No.301, Khasra No.1053. The different co-sharers sold the land in the shape of plots to different persons and such persons came into possession. Khasra No.1053 was bifurcated into six min numbers as such all the owners were in different portion of the land, which was purchased by the defendant and his wife Mamta Soni from Balbir

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Singh, Sohan Singh, Nirbhai Singh, Nirmal Singh, Kulwant Singh and they became the owners and raised the construction after sanctioning the site plan from Nagar Council, Doraha. In fact, there was no vacant property adjoining to the eastern side of the property owned and possessed by defendant and Mamta Soni. The plaintiff had sold almost his entire property and was not in possession of any part of the property comprised in Khasra No.1053. This fact was concealed.

The plaintiff in support of his case, examined six witnesses and brought on record Ex.P1 to Ex.P7, whereas the defendants examined two witnesses and brought on record various documents.

In rebuttal, the plaintiff brought on record Ex.P8 and Ex.P9.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the Courts below have erroneously dismissed the suit primarily on the evidence pertaining to the existence of vacant land of 5 biswas out of total land measuring 13B-02B, comprised in Khasra No.1053, which was not owned and possessed by the plaintiff, but the fact of the matter is that the Courts below erred in ignoring the testimony of PW1, Mohan Lal, retired Kanungo as the defendants did not cross-examine him on many occasion and ultimately, he died, hence, his statement already recorded could not go unnoticed. PW3-Avtar Singh, Namberdar, supported the case of the plaintiff. Demarcation of the plot was duly proved through the testimony of PW2 Jagdev Singh as well as PW3-Avtar Singh. The appellant-plaintiff submitted an application for appointment of the Local Commissioner, which should have been allowed.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that Mohan Lal was partly cross-

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examined and therefore, he did not come for cross-examination. PW3 Avtar Singh, who allegedly supported the case of the plaintiff, was also not cross-examined. The plaintiff miserably failed to discharge the onus in support of the aforementioned averments. The demarcation report was a material evidence to prove the possession of the plaintiff, but the plaintiff did not move any application for demarcation or got the same before filing of the suit. There was only one Khewat No.301, wherein the plaintiff along with other persons were co-sharers and it remained a mystery whether there was a partition amongst the co-sharers or not. The plaintiff in cross-examination admitted that Ajay Pal Soni and Mamta Soni, had raised the construction of wall in the year 2003, over the suit land, which was in her possession, but the pleadings qua threat from defendant No.2, are conspicuously absent. Khasra No.1052 and 1053, as per *aks sajra* (Ex.P3) are adjoining. All these factors lead to an irresistible conclusion that the plaintiff miserably failed to discharge the onus in support of the pleadings.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

04.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**