

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3694 of 2016 (O&M)
Date of Decision : 30.11.2016

Mange Ram

....Appellant

Versus

Smt. Saroj

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Parkash Chahar, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal by defendant-appellant (Mange Ram) against concurrent judgments and decree of Courts below whereby suit of plaintiff-Smt. Saroj wife of Dharambir was decreed and the defendant-appellant was directed to vacate and hand over possession of portion of suit property bearing no. 237 shown with letters 'EBCF' in site plan situated in village Mundsa, *Tehsil* Matanhail, District Jhajjar, Haryana. The defendant-appellant was also restrained from interfering in any manner over the suit property.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. Admittedly, plaintiff is owner of land bearing plot no. 237 and the defendant owns the land bearing plot no. 238. Plaintiff alleged that the defendant encroached upon portion of her plot shown with letters 'EBCF' with red colour in the site plan and was requested to hand over the same to plaintiff, which he refused, hence this suit.

4. The defendant alleged his actual physical, specific and

peaceful possession over the suit property but denied and controverted the contentions raised by plaintiff.

5. Relying on the demarcation report dated 18.07.2012 (Ex. P-1), which was conducted in the presence of defendant and his candid admission that he is not having title/interest in the suit land, learned Additional Civil Judge (Senior Division), Jhajjar held that the appellant has unlawfully encroached upon the suit property by raising construction in a clandestine manner, without any title, interest or right therein. Ist Appellate Court also observed that the defendant has never challenged demarcation report and his unauthorized possession over the portion of suit property bearing *khasra* no. 237 belonging to plaintiff, is duly proved.

6. Learned counsel for the appellant has argued that plot nos. 237 and 238 adjoins each other and even if some portion of suit property bearing no. 237 has been encroached and construction has been raised over it by the defendant-appellant, plaintiff-respondent could be compensated by paying price of the same as per prevailing market value. He has, however, not assailed the finding of fact recorded by Courts below that unauthorized possession of the defendant-appellant over the portion of suit property of plaintiff bearing plot no. 237, is duly proved.

7. Submissions by learned counsel for the appellant make out no reason to interfere with the findings of Courts below. An owner is entitled to recover possession of his encroached property and there is no question of giving any liberty to the encroacher by assessing market value and calling upon the encroacher to pay the same instead of returning the possession of the encroached property.

8. On perusal of judgments of Courts below and paper-book, I

find no legal or factual infirmity therein calling for any interference. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

November 30, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No