

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

RSA No.2456 of 2015 (O&M)
Date of Decision :08.04.2016

Panna Lal through his LR

.....Appellant

Versus

Budhram @ Budhu through his LRs and Others

.....Respondents

Coram Hon'ble Mr. Justice Amol Rattan Singh.

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

Amol Rattan Singh, J.

Civil Misc.No.3347-C of 2016

In terms of the order dated 27.07.2015, the report of the local commissioner (Ex.D-1 before the learned Courts below), has been annexed with the present application.

Application is allowed. The aforesaid report is taken on record as Annexure A-2 to the grounds of appeal.

RSA No.2456 of 2015

(1) This is an appeal filed by the plaintiff in a suit which was decreed in his favour by the learned Additional Civil Judge (Sr.Divn.) Jhajjar, vide his judgment and decree dated 22.10.2009, with that judgment and decree, however, set aside and reversed by the learned Additional District Judge, Jhajjar, in the first appeal filed by the respondents herein (defendants in the suit).

(2) The facts, as have been taken from the judgment of the learned Civil Judge, are that the appellant-plaintiff (hereinafter referred to as the plaintiff) sought a declaration and consequent permanent injunction

thereafter, against the respondents-defendants (hereinafter referred to as defendants), to the effect that he (plaintiff) is the owner in possession of Plot No.420 measuring 86 Sq. yards, situated in Mohalla Jama Masjid, Jhajjar, as described in detail in the plaint, which the plaintiff claimed to have purchased on 08.09.1960, in a public auction, for Rs.150/-, after which he remained owner in possession of the said plot.

It was alleged that the plaintiff being an old person residing with only his wife, the defendants were trying to dispossess him from the said plot, though they had no concern with the property. Consequently, the suit was filed.

(3) Upon notice being issued, the defendants filed their written statement submitting that the first defendant, Budhram, alongwith his brothers Phool Singh and Daulat Ram, were owners in possession of a house numbered as evacuee property No.422, measuring 748 Sq. yards, which had been purchased by them vide a sale deed dated 24.01.1962, from one Budh Dev son of Bhagwan, who became the owner thereof on the basis of a sale certificate issued by the Rehabilitation Department on 25.10.1961.

It was further claimed by the defendants, that the plot in dispute was not part of property No.420 (the word 'not' is missing in the judgment of the Civil Judge but is clear from the judgment of the learned first appellate Court). Hence, it was claimed that the plaintiff had nothing to do with the disputed plot and that he had annexed a wrong site plan with his plaint.

It was further submitted by the defendants in the written statement, that earlier in Civil Suit No.612 of 1991, titled Daulat Ram Vs. Panna Lal, the plaintiff in the present suit (present appellant in this appeal) had produced a site plan (Ex.D-1 in the earlier suit) in which he showed the disputed plot to be the property of present respondent-defendant No.1 Budhram and his brothers Phool Singh and Daulat Ram. Hence, it was

pleaded that the plaintiff was estopped from taking a wholly contradictory stand in the suit now filed by him.

(4) Upon the above pleadings, the following issues were framed by learned Additional Civil Judge :

- (i) Whether the plaintiff is owner in possession of the suit plot as detailed in para-1 of the plaint and depicted with letters ABCD in red colour in the site plan attached therewith? OPP.
- (ii) Whether the defendants are illegally interfering into the peaceful ownership and possession of the plaintiff over the disputed plot by way of raising construction thereon or in any other manner without having any right, title or concern whatsoever therewith?OPP
- (iii) Whether the plaintiff has no locus-standi to file the present suit? OPD.
- (iv) Whether the suit is not maintainable in the present form ? OPD.
- (v) Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
- (vi) Whether the plaintiff has no cause of action to file the present suit? OPD.
- (vii) Whether the defendants are entitled to special costs ? OPD.
- (viii) Relief.

(5) The plaintiff examined two witnesses and tendered in evidence, two documents whereas the defendants examined 7 witnesses.

(6) Upon consideration of the evidence before him and the pleadings and the arguments raised, the learned Civil Judge found that defendant No.1 Budhram had admitted in his cross examination that plot No.420 belongs to the plaintiff and that he has no concern with the same. PW-2, Chunni Lal, however, admitted that the suit property was being used by the defendant on which they had raised a wall.

Consequently the learned Civil Judge held that the defendants had no right to interfere in Plot No.420 which belongs to the plaintiff. Hence, he was declared to be the owner of plot No.420 measuring 86 Sq.yards and the defendants were restrained from interfering from the suit property in any manner. Thus the suit filed by the present appellant-plaintiff was decreed in his favour.

(7) In the appeal filed by the present respondents before the learned Additional District Judge, Jhajjar, the learned Additional District Judge noticed that, in his cross-examination, the plaintiff had admitted that he did not know the dimensions of the disputed plot and had admitted that there exists a "*gali*" (lane) between his land and the disputed plot. He further stated that his land lies towards the eastern side of the disputed land and that he also did not know whether Plot No.422 purchased by Budh Dev in 1961, was sold by the said Budh Dev to Budhram in 1962 and that the area of that plot was 748 Sq.yards.

The plaintiff had also admitted that he had filed a site plan in another suit pending between him and Daulat Ram, regarding plot No.421, though he stated that the disputed land existed towards the western side of the said plot No.421.

(8) Discussing the testimony of PW-2, Chunni Lal, the learned lower appellate Court noticed that though Chunni Lal had deposed that the land in question was owned and possessed by the plaintiff after he had purchased it on 09.09.1960, however, he admitted that he did not know the dimensions of the disputed land. This witness also admitted the existence of an old '*gali*' towards the eastern side of the disputed land, after which the house of the plaintiff-Panna Lal was existing.

PW2 further admitted that the house existing towards the western side of the dispute land was purchased by Budh Dev in 1961 and

later sold by him to Budhram in 1962 and that the number of the said house is 422.

This witness further admitted that the disputed land was being used by both Budhram and Daulat Ram, though 'forcibly'. He also admitted the existence of a wall over the disputed land.

This witness, on his admission, was found to be the brother of the plaintiff-Panna Lal.

Thereafter, the learned first appellate Court discussed the evidence led by the defendants in detail.

(9) Having discussed the evidence led before the learned Civil Judge, the first appellate Court found that the only question was whether the suit property was part of plot No.420 owned by the plaintiff, or a part of the suit property owned by the defendants. Therefore, to appreciate the above, the learned first appellate Court compared the site plan, Ex.P3 submitted by the plaintiff in the 'current suit', with the site plan earlier submitted by him, Ex.D-3 in the suit filed against the plaintiff by Daulat Ram.

From a comparison of the same, the learned Court found that in respect of Ex.D-3 the plaintiff had admitted that the '*Gher*' of Phool Singh and Daulat Ram included the disputed property and on the other hand, he could not prove that the area which he showed to be the disputed property in Ex.P3, actually formed part of plot No.420 purchased by him in the year 1960.

(10) Still further, it was seen that the sale certificate of property No.422 (Ex.D-6), showed that there was a *Gali* (lane) and a *Samaadhi* of a *Peer* towards the eastern side of plot No.422. The existence of the *Gali* had also been admitted by PW-2. Therefore, after tallying the aforesaid evidence, the learned first Appellate Court, found that the *Peer's Samaadh* falls in property No.421 and as such, the disputed property was part of khasra

No.422 and infact, the plaintiff had not shown the existence of the *Gali* between khasra No.422 and 421.

(11) Hence, on appraisal of the evidence as above and further giving some more details, the learned first appellate Court set aside the judgment and decree of the Additional Civil Judge and dismissed the suit of the plaintiff.

(12) When this matter came up before hearing for the first time on 27.07.2015, the counsel for the plaintiff had been directed to place on record in this appeal, the report of the local commissioner, Ex.D-1.

The said report has now been placed on record, a perusal of which shows that in the presence of both parties first plot number 422 of the defendant was measured, which was found to be correct as per the site plan and the measurement of which was also in accordance with the sale certificate issued in respect of the said plot, showing it to be of an area of 748 Sq.yards.

The sale certificate produced by the plaintiff, showing plot No.420 to be of 86 Sq.Yards area, was not found to be matching with any of the copies of the site plan of plots received from the record of the Tehsildar (Sales) of the Department of Rehabilitation.

Hence, for proper demarcation of plot No.420, the local commissioner recommended that the "*Aksh Shajra*" should be got prepared.

(13) Mr.Sandeep Parkash Chahar, learned counsel for the appellant-plaintiff (now represented through his LRs), submitted that the local commissioner's report infact remained inconclusive and as such, no reliance should have been placed upon it by the learned lower appellate Court. On query, however, learned counsel could not deny that the site plan, Ex.D-3 produced by the defendants in the suit out of which this second appeal arises, was the same site plan as had been produced by the plaintiff as Ex.D-

1, in the suit filed against him by Daulat Ram, brother of defendant No.1.

That factual aspect not being in dispute, I do not see as to how the appellant could have turned around in the subsequent suit to show the disputed land to be falling within different boundaries (in the subsequent suit).

(14) A perusal of the judgment of the lower appellate Court shows that the Court has gone into details on the basis of various site plans produced before it, as also the local commissioners' report, to come to a conclusion that the disputed land falls not in plot No.420 owned by the appellant-plaintiff, but in plot No.422 owned by the respondents-defendants.

It being wholly a finding of fact on the basis of documentary, as also oral evidence led before the Courts below, I find no reason whatsoever to go into that finding, which has not been shown to be perverse in any manner.

Consequently, the appeal is dismissed *in limine*, with no order as to costs.

08.04.2016
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(Amol Rattan Singh)
Judge