

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4740 of 2016 (O&M)

Date of Decision: December 16, 2016

Bimal Rai & another

...Appellants

Versus

Municipal Corporation, Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Ms.Neha Jain, Advocate,
for the appellants.

AMIT RAWAL, J.(Oral)

Appellant-plaintiffs are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit seeking the following relief against the Municipal Corporation, Ludhiana, has been dismissed:-

“Suit for permanent injunction restraining the defendant and its agents, servants, employees etc.from raising any construction over the vacant plot owned and possessed by the plaintiffs shown as red in the site plan and bounded as under:-

North: Ghumar Mandi Road

South: Road

East: Road

West: Road

situated at Ghumar Mandi, opposite Gurudwara Mai Nand Kaur, Ludhiana and further restraining the defendant and its agents, servants, employees etc.from interfering in the peaceful possession of the plaintiffs and other co-owners in the above said property on any account in any circumstances whatsoever, on the basis of oral and documentary evidence.”

Ms.Neha Jain, learned counsel for the appellant-plaintiffs submits that the suit property was a vacant land owned and possessed by the plaintiffs situated at Ghumar Mandi, opposite Gurudwara Mai Nand Kaur, Ludhiana and other property bearing khasra No.158/2 was previously owned by Chaman Lal, who was owner of total property measuring 17 kanals 3 marlas, bearing Khatta No.291/305. Chaman Lal alienated the portion of the aforementioned property and also left the roads in the property and the area measuring 1062 square yards was still in the name of Chaman Lal. After his death, plaintiffs and the legal heirs of their brother have become the co-owners.

She further submits that the demarcation was done on 6.9.2005 from the revenue officials and it revealed that the total area measuring 1062 square yards is lying vacant. The respondent-defendant started interfering in the peaceful possession of the plaintiffs over the suit property, much less threatened to raise construction and, therefore, the suit was filed. The Lower Appellate Court has committed illegality in not relying upon the report (Ex.P5). The ownership is proved through jamabandi and khasra girdawari (Ex.D1 and Ex.D2), yet the Lower Appellate Court has declined the injunction as sought for.

I have heard the learned counsel for the appellant-plaintiffs, appraised the paper book and of the view that the demarcation report (Ex.P5) is a self-serving document as the same was done in the absence of the officials of the Municipal Corporation. If at all, the appellant-plaintiffs were sure about the injunction, they could have again sought the assistance of the demarcator as the suit was filed on 16.3.2007. The demarcation was the clincher for adjudication of the suit. Having failed to do so, I am of the

view that the appellant-plaintiffs have miserably failed to discharge the onus.

There is another aspect of the matter. The appellant-plaintiffs have submitted that in documents Ex.D1, Ex.D2 and Ex.D3, khasra No.158/2 is not reflected. All these points have been considered by the Lower Appellate Court and rightly so, declined the relief.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Lower Appellate Court, which are based upon oral and documentary evidence. No ground for interference is made out.

Appeal stands dismissed.

December 16, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No