

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

R.S.A. No.3660 of 2015 (O&M)

Date of decision: 08.01.2016

Khazan Singh (since deceased) and ors.

...Appellants

Versus

Kura Ram

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Diwan S. Adlakha, Advocate for the appellants.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 30.05.2015, passed by the learned District Judge, Yamuna Nagar, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellants, against the judgment and decree dated 28.11.2011, passed by the learned Additional Civil Judge, Sr. Divn., Yamuna Nagar, (for short, the 'trial Court'), has been dismissed.

The brief facts of the case are that the respondent-plaintiff had filed the suit for permanent injunction claiming that he is the owner in possession of the property marked by letters ABCDEFGHIJ, situated within abadi of village Barsan, Tehsil Jagadhri, District Yamuna Nagar and part of the same bears Khasra numbers whereas, remaining part is

within abadi and part of it has been acquired by way of exchange with Babu Ram. Therefore, the respondent-plaintiff is exclusive owner of the entire property shown in rough site plan Mark X and the appellant-defendant ought not to have any objection if he raised construction of wall marked as AB in said site plan. The respondent-plaintiff has no objection if the disputed wall is treated as common between him and appellants-defendants, but the appellants are neither raising construction jointly with him nor allowing him to construct it exclusively. The southern part of this property was allotted to respondent-plaintiff during consolidation and part of it located towards western side, has been acquired by him by way of exchange with Babu Ram and remaining part of it is abadi. In defence, the appellants-defendants had argued that only letters AHII in the site plan attached with their written statement was acquired by the respondent-plaintiff by way of exchange with Babu Ram and appellants-defendants are in possession of the property marked by letters LMAN. The appellants-defendants further submitted that length of eastern wall of bara No.112, owned by the respondent-plaintiff, which is situated in the eastern and southern side of exchanged property, is only 159' and upto 159' the wall is joint and after that 13' wall is owned exclusively by them. After hearing both the parties and carefully going through the case file, the following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled for permanent injunction restraining the defendants from interfering in

the process of construction of wall as detailed in the hearing of the plaint? OPP

2. Whether suit of the plaintiff is not maintainable? OPD

3. Whether plaintiff has no locus standi to file the present suit? OPD

4. Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD

5. Whether plaintiff has concealed the true and material facts from the Court? OPD

6. Whether defendants are entitled for special costs under Section 35-A of CPC? OPD

7. Relief.

The learned trial court, while deciding qua the aforesaid issues, had observed that the report of the Local Commissioner, Ex. P3, reflecting the factual position on the spot, is same as has been pleaded by the respondent-plaintiff and DW2-Vinod Kumar has admitted in his cross-examination that in the site plan Ex. P2, the respondent-plaintiff has shown his own land and he has not shown the land of Vinod Kumar, which suggests that Ex. P2 is correct. He further admitted that the wall which was half constructed belonged to them but has also stated that they were not having any proof with regard to their ownership over the wall. Therefore, the appellants-defendants cannot claim exclusive ownership of the wall to the extent of 13' towards northern side shown in site plan Ex. P2. It has also been held that any person, who is having possession over the land of abadi is considered owner thereof and no separate proof of

ownership regarding the same is required to be given which controverts the allegation of the appellants-defendants with regard to proof of ownership of the land obtained by the respondent-plaintiff in exchange from Babu Ram and other abadi land. Accordingly, the suit was decreed in favour of the respondent-plaintiff.

Being dis-satisfied with the said judgment and decree, the appellants-defendants have preferred the appeal.

The first Appellate Court, analyzed the matter in issue, evidence on record and, on reviewed thereof, found itself in concurrence with the view drawn by the trial Court and findings recorded in support thereof. Thus, the Ist appeal was dismissed.

Hence, the present appeal.

The learned counsel submits that the site plan submitted by the respondent-plaintiff is not in accordance with the factual position on the spot. The appellants-defendants had acquired the property located towards North side from Man Singh by way of oral exchange, therefore the plaintiff has no right to force the defendants to construct the wall jointly. The learned Courts below failed to appreciate the fact that the claim of the respondent-plaintiff regarding exclusive ownership in possession of the property marked by letter ABCDEFGHIJ situated within Abadi of village Barsan, Tehsil Jagadhri, is against record as the whole of the suit property is not part of the Abadi Deh.

I have heard the learned counsel for the appellants and carefully gone through the entire record.

The report of the Local Commissioner, Ex.P3, suggests that the factual position of the land as alleged by the respondent-plaintiff is correct. Even the brother of the appellant-defendant i.e. Khazan Singh, and, Vinod Kumar-DW2, during his cross examination, after seeing the photographs Ex. PW1/A, which is part of the said report, admitted them to be factually correct. Further, he admitted that in site plan Ex. P2, the respondent-plaintiff has shown his own land and not that of Vinod Kumar and that they were not having any proof with regard to their ownership over the disputed wall. Therefore, the learned Courts below arrived at the conclusion that the appellants-defendants cannot be the exclusive owner of disputed wall to the extent of 13' towards northern side as shown in the said site plan. As far as the allegation of the appellants-defendants regarding the non-availability of any proof to the effect of ownership of the land obtained by the respondent-plaintiff in exchange from Babu Ram and other abadi land is concerned, it has been held that any person who is having possession over the land of abadi is considered owner thereof and no separate proof of ownership regarding the same is required to be given. The jamabandi for the year 1998-99 shows the respondent-plaintiff to be owner in possession of land comprising in Khewat No.50 Min/47, Khatauni No.69 Min and Khasra No.112 measuring 1 Kanal 2 Marlas. Ex. P3, copy of exchange deed

dated 28.09.1984, wherein the respondent-plaintiff has been shown as the first party and Babu Ram has been shown as the second party, by way of which, the respondent-plaintiff exchanged his land measuring 1642 Sq. Yards with the land of Babu Ram measuring 1357 Sq. Yards.

Further, no substantial question of law has arisen for adjudication in this appeal. Accordingly, no interference is called for in the well reasoned judgments and decrees passed by the learned Courts below.

Dismissed.

08.01.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**