

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: November 11th, 2016

1. R.S.A.No.5793 of 2016 (O&M)

Subhash Singh

...Appellant

Versus

Subhash Singh & another

...Respondents

2. R.S.A.No.5794 of 2016 (O&M)

Subhash Singh

...Appellant

Versus

Mahender Singh (since deceased) through L.Rs.

...Respondents

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

Present: Mr.Sanjay Mittal, Advocate,
for the appellant in both the appeals.

AMIT RAWAL, J.

By this order, I intend to dispose of two Regular Second Appeals bearing No.5793 of 2016 and 5794 of 2016 as the common questions of law and fact are involved in both the appeals.

Regular Second Appeal No.5793 of 2016 is arising out of Civil Suit No.1330 of 2009 titled as “Subhash Singh Versus Mahender & another” (hereinafter called “Suit No.1) seeking injunction against the defendants from interfering in the user of plaintiff over the Rasta shown by letters EFGC in the site plan, situated along with the property comprised in Khewat No.114, Khatoni No.198, Mustil and Kila No.118//4/4 (1-6)//7/1 (2-0) Kita 2 total area measuring 3 kanal 6 Marla situated in village Pali,

whereas Regular Second appeal No.5794 of 2016 is by the same very defendant in Civil Suit No.207 RT of 2010, titled as “Mahender Singh Versus Subhash Singh” (hereinafter referred “Suit No.2), whereby the ejectment has been sought in respect of the land comprised in Khewat No.106, Khatoni No.171, Mustil and Kila No.118//7/2, area 1 kanal 11 marlas and on East 1 karam, West 1 karam, South 18 karam and North 18 karam, measuring 2 kanals shown at Point P in the site plan Ex.P1/B and as per the demarcation report Ex.P1/A.

Mr.Sanjay Mittal, learned counsel for the appellant in both the appeals submits that Suit No.2 was dismissed by the trial Court by noticing that Subhash Singh had proved the oral exchange. The Court also relied upon the demarcation report and noticed that the independent witness, who carried out the demarcation report, opined encroachment at three different points, namely, P, P1 and P2. However, at point Ex.DA, in the last three lines of his cross-examination, the witness admitted that there was no encroachment and the same was lying vacant, but the Lower Appellate Court has committed illegality in allowing the appeal. There is gross illegality and perversity. The appellant has constructed the boundary wall on the same. Suit No.1 was decreed by the trial Court, but the Lower Appellate Court rejected the same. The Lower Appellate Court has committed illegality and perversity in relying upon the demarcation report as there were/are lot of contradictions. The oral exchange is permissible in law. The suit for ejectment was barred by law of limitation as it was instituted on 28.7.2010, whereas the appellant had raised the construction of the boundary wall in the year 1984 vide sale deed dated 3.8.1984. This fact has not been taken care of and can always be taken cognizance as per the

provisions of Section 3 of the Limitation Act.

He further submits that the demarcation report dated 9.8.2009 is not in accordance with the provision of Order 26 and High Court Rules and Regulations. In fact, there is no encroachment and the suit has erroneously been decreed. The exchange deed has been duly proved on record. The terms and conditions of the exchange were still in vogue and the same had been proved through copy of Aks-shijra Ex.DA. The highlighted red portion has been shown as passage/Rasta in the land of the plaintiff and the same is being used by the plaintiff himself and, thus, urges for decretal of suit No.1 and dismissal of Suit No.2.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no merit and force in the contention of Mr.Mittal, for, the sale deeds are only in respect of land and not of construction. The plea of limitation, thus, is highly misplaced as no evidence has been led regarding the construction of the boundary wall. Once the demarcation report proved the encroachment and the same has not been disproved through independent report or any other means, the Courts below have no other option but to order for ejectment of the area, as noticed above. The encroached area, according to Mr.Mittal, is situated on the boundary wall and not on the house. If it is so, the appellant is well within his right to shift his boundary wall for the purpose of compliance with the decree. No doubt, had there been simpliciter suit for injunction at the instance of the appellant, perhaps he would have succeeded in allowing of the appeal in view of the long and settled possession. Once the original owner has sought the ejectment, injunction cannot be granted by taking the aid of ratio decidendi culled out by the Hon'ble Supreme Court in **Rame**

Gowda (D) by L.Rs Versus M.Varabappa Naidu (D) by L.Rs & another,
2004 (1) SCC 769.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Lower Appellate Court, which are based upon appreciation of oral and documentary evidence. No substantial question of law arises for determination.

No ground for interference is made out. Appeals stand dismissed.

November 11th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No