

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

RSA No.4990 of 2015

Date of decision : 07.01.2016

Charan Singh

.....Appellant

Versus

Surajpal and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. R.S. Randhawa, Advocate for appellant.

DARSHAN SINGH, J.

The present regular second appeal has been directed against the judgment and decree dated 04.03.2015, passed by the learned District Judge, Palwal vide which the regular first appeal filed against the judgment and decree dated 30.08.2013 passed by learned Civil Judge (Junior Division), Palwal was dismissed.

2. For convenience sake, reference to the parties is being made as per their status in the civil suit.
3. As per the case of the plaintiff-appellant, he and proforma

defendants were the joint owners in possession of the suit property comprised in Khewat/Khatoni No.65/70, rectangle No.81, Killa No.1 (0-9) to the extent of 10/152th share, situated within the revenue estate of village Harpali. The defendants in collusion with each other, raised construction of 'Khors' and boundary wall illegally about 2/3 years back. Defendant No.1 is a co-sharer and other defendants have nothing to do with the suit property. They are bent upon to raise the fresh construction and if they succeeded in doing so, the plaintiff will suffer an irreparable loss and injury. The defendants refused to vacate the suit property in spite of repeated requests. Hence, the plaintiff filed the suit for possession with consequential relief of injunction.

4. Defendant No.1 was proceeded against *ex parte* by the learned trial court vide order dated 04.06.2009. The suit was contested by defendants No.2 to 4 on the grounds *inter alia* that they have been residing in their respective residential houses constructed over the land comprised in Khewat No.189, rectangle No.81, Killa No.2 measuring 2 Kanals 17 Marlas to the extent of half share thereof for the last more than 30 years continuously and peacefully. The plaintiff had no concern with any portion of the aforesaid land. The other facts pleaded in the plaint were controverted. The defendants also raised certain legal and preliminary objections.

5. From the pleadings of the parties, the following issues were framed by the learned trial court vide order dated 4.10.2010:-

1. Whether the plaintiff is entitled to the decree for possession as prayed for? OPP

2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no *locus standi*/cause of action to file the present suit? OPD
4. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD
5. Relief.

6. The findings on all the issues were returned against the plaintiff by the learned trial court and the suit filed by him was dismissed vide impugned judgment and decree dated 30.8.2013.

7. Aggrieved with the aforesaid judgment and decree, the plaintiff preferred the appeal which was also dismissed by the learned District Judge, Palwal vide impugned judgment and decree dated 04.03.2015. Hence, this regular second appeal.

8. I have heard Mr. R.S. Randhawa, Advocate, learned counsel for the appellant-plaintiff and have carefully gone through the paper-book.

9. Initiating the arguments, learned counsel for the appellant contended that the plaintiff and proforma respondents are the owners of the land in dispute, which has been illegally encroached upon by the defendants. He contended that the ownership of the plaintiff was proved from the revenue record. He further contended that the ownership of the plaintiff was not disputed with respect to rectangle No. 81, Killa No.1 (0-9) to the extent of 10/152th share. He further contended that the plaintiff was also proved and placed on record demarcation report Ex.P1, which clearly indicates that the land belonging to the plaintiff has been illegally

encroached upon by the defendants. So, the plaintiff is entitled for the possession of the suit land and the suit filed by him has been wrongly dismissed by the courts below.

10. I have duly considered the aforesaid contentions.

11. It is settled principle of law that the second appeal can only be entertained if it involved a substantial question of law. In the grounds of appeal, the plaintiff has raised the following substantial question of law :-

1. Whether the report Ex.P1 prepared by a Local Commissioner could have been discarded merely on the ground that the said report was not got prepared by either the plaintiff or the defendants?
2. Whether both the learned courts below have misread the evidence produced on record?
3. Whether the judgment and decree passed by both the learned Lower Courts below is against the principles of natural justice?

12. There is concurrent findings of fact by both the learned courts below. It is settled principle of law that scope for interference with concurrent findings of fact while exercising the jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') is very limited. Such interference is only warranted where the trial court and/or the first appellate court has misdirected itself in appreciating the question of law. There is no scope of interference in the second appeal where there is no perversity in the approach of the courts below. The High Court while exercising the powers under Section 100 CPC cannot undertake the task of re-appreciating of evidence and record the findings different than those recorded by the courts below merely because

another view is possible view. Keeping in view the aforesaid principle of law, we have to examine the case in hand.

13. As per the case of the plaintiff, the defendants have encroached upon the land comprised of Khewat/Khatoni No.65/70 rectangle No.81 Killa No.1 (0-9). The plaintiff has filed the suit for possession. Thus, the possession of the defendants over the disputed land is an admitted fact. The plaintiff is seeking possession on the basis of title. So, the onus was upon the plaintiff to show that he was the owner of the land in dispute and the defendants were in illegal possession thereof. The oral evidence adduced by the plaintiff cannot establish the facts in issue. The only way to prove that the defendants have encroached upon the land owned by the plaintiff was demarcation of the suit property.

14. The plaintiff has produced the demarcation report Ex.P1 during trial, which was a certified copy of the demarcation report dated 10.08.2000 prepared by one Lal Chand retired Kanungo on the application of one Bhagwan Sahai resident of village Harpali. Admittedly, the said demarcation was not carried out at the instance of either of the parties to the suit. The said demarcation was conducted on the application of one Bhagwan Sahai. There was no material on record to show that any notice was given to the defendants at the time of conducting of demarcation. The plaintiff in its evidence has only examined himself as PW1 and Hansraj another inhabitant of the village as PW2. The certified copy of the demarcation report Ex.P1 was not *per se* admissible. Lal Chand retired Kanungo who had carried out the said

demarcation was not examined, so the said demarcation report cannot be taken into consideration. Moreover, that demarcation report pertains to the year 2000 whereas, as per the plea of the plaintiff defendants have made the encroachment recently i.e. for the last 2/3 years prior to the institution of the suit, so that old demarcation report was of no help to the plaintiff.

15. Defendant No.1 was admittedly a co-sharer in the suit property. So, he cannot be considered to be in illegal possession thereof. It was not the case of the plaintiff that he was in possession of more than his share. The allegations regarding encroachment were quite vague and general in nature. Thus, the findings recorded by the learned courts below are based on the evidence and material on record, which do not suffer from any perversity calling for any interference in this regular second appeal.

16. Thus, in view of my aforesaid discussion no question of law much less the substantial question of law, as claimed by the plaintiff arises in the present appeal.

17. Consequently, the present appeal is without any merits and the same is hereby dismissed in *limine*.

18. However, no order as to costs.

07.01.2016
sunil yadav

(DARSHAN SINGH)
JUDGE