

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5606 of 2015 (O&M)

Date of decision: 25.05.2016

Pawan Kumar and Others

.....Appellants

Vs.

Satish Kumar and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr.Sunil K.Tandon, Advocate, for the appellant.

(1) To be referred to the Reporters or not?

(2) Whether the judgment should be reported in the Digest?

AMOL RATTAN SINGH, J.

This is the second appeal of the defendants, in a suit filed by respondent No.1-plaintiff, seeking that the defendants be permanently restrained from making any construction on the land contained in Khasra No.7//27, measuring 5 Kanals-10 Marlas, situated in Village Ram Pur Sarasheri, District and Tehsil Ambala. He also sought mandatory injunction directing the defendants to remove the construction already raised on the aforesaid khasra number, to the extent of 5 ½ marlas (166/1/2 Sq.yards) and to hand over vacant possession of the said piece of land to the plaintiff.

The case set up by the plaintiff, as taken from the judgment of the learned Civil Judge (Jr.Divn.)Ambala Cantt., is that he was in possession of the land in question, with the defendants in occupation of some adjacent land to the suit land, on the eastern side. He applied for demarcation of the aforesaid khasra number to the Tehsildar Ambala, upon which the Sadar Kanoongo gave the demarcation of the land to the plaintiff. It was further contended that in the

month of December 1997, the defendants encroached upon a portion of the aforesaid khasra number to the extent of 5 ½ marlas, forcibly. Despite the plaintiffs' requests to remove the encroachment it was not removed. It was further contended that the defendants had now collected building material on the spot and had started raising construction on the eastern portion of the land comprised in khasra No.7//27. Consequently, the suit was filed.

2. Upon notice, the defendants filed their joint written statement. Other than the usual preliminary objections, on merits they stated that in fact they are owners in possession of their residential house since the time of their forefathers and that there is already an old boundary wall and if there was any demarcation, it was an act of fraud without the knowledge of the defendants and as such not binding on them. It was denied that they had ever encroached upon any portion of the land falling in khasra No.7//27.

3. Upon a replication filed by the plaintiff, the following issues were framed by the learned Civil Judge:-

1. Whether the plaintiff is entitled to the injunction as well as mandatory injunction as prayed for? OPP.
- 1A. Whether the plaintiff is owner of the suit property? OPP.
2. Whether the defendants are owner in possession of the suit property? OPD.
3. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD.
4. Relief.”

4. By way of the affidavit, the plaintiff examined two witnesses including himself and by way of documentary evidence, produced a copy of a will as

P5, two jamabandies as Exs.P-6 and P-7, mutations as Exs.P-8 and P-9, Khasra Girdawaries as Exs. P10 to P12, a rough site plan as Ex.P13 and an application/notice to the Halqua Patwari for demarcation of the land, as Ex.P-14.

5. In their evidence, the defendants examined Krishan Kumar and one Rattan Singh as witnesses and placed reliance upon a sale deed as Ex.D-1.

6. Upon a appraisal of the aforesaid evidence, the will, Ex.P-2, was found to be proved by the learned Civil Judge (with no detailed discussion as to the executor and beneficiaries of the Will), the judgment and decree Ex.P-4 and P-5 vide which the plaintiffs' fathers' sister had relinquished her share in favour of the plaintiff in the aforesaid khasra number, was also found to have been proved, as was the revenue record (Ex.P-6 to P-12), in which the ownership and possession of the plaintiff was shown over the suit land.

It was also found that the local commissioner appointed by the court itself, i.e. the Naib Tehsildar, had filed his report (Ex.P13) after demarcation of the land. The demarcation was found to have been done after due notice to the parties, which was proved to be Ex.P-14.

It was also noticed that the defendants had refused to accept the notice and instead of accepting the report, they had relied upon a sale deed which was unregistered and as such was not admissible in evidence.

7. It was contended that on behalf of the appellants-defendants, that there was another report of a local commissioner, one Sh. I.S.Gill, Advocate, and as such, the second report was not admissible in evidence.

However, the Court held that firstly the first local commissioner had no yardstick to measure the land on the spot, which was why a revenue official was appointed and further, even if the first report was to be considered, it had only

mentioned a boundary wall, without giving the age of the wall. It was further

noticed by that Court that in the site plan (Ex.P-13), khasra No.7/6/6 had been duly shown by the local commissioner, comprising of 2 ½ marlas of land, belonging to the defendants.

8. Thus, by an appraisal of the evidence, primarily the report of the local commissioner, it was held that the defendants had encroached upon some part of the land falling in khasra No.7//27 and actually they had also taken a contradictory stand, inasmuch as, it was first contended that they were in possession of the land by virtue of the sale deed Ex.D-1 and thereafter, that they had become owners of the land by way of adverse possession. However, they had failed to prove as to since when they were in open and hostile possession of the land, to the knowledge of the true owners, prior to the filing of the suit.

Hence, finally it was held by the court, that the site plan/report of the local commissioner, Ex.P13, made it very clear that the Kanoongo who had actually demarcated the land, had done so after proper fixation of points.

Therefore, the suit was decreed in favour of the respondent-plaintiff, holding that the defendants had encroached upon a part of his land.

9. In the first appeal filed by the present appellants, the learned Additional District Judge, after discussing the same evidence, found no reason to interfere in the finding of the learned Civil Judge and consequently dismissed that appeal.

10. Before this court, though learned counsel for the appellants has vehemently tried to argue that the report of the Local Commissioner appointed by the court should not be relied upon, however, the report filed was that of the Naib Tehsildar, based on a demarcation carried out by the Kanungo, pursuant to the direction of the Naib Tehsildar, who had been appointed to file his report by

the Court itself.

As already noticed, it has been detailed in the judgment of the learned Civil Judge (Jr.Divn.) Ambala Cantt., that the demarcation report had been carried out by the Kanoongo with reference to points, giving details of the demarcations. The learned lower appellate Court, after appraisal of the evidence, has agreed with that finding.

11. In view of the above, I see no reason to interfere with a finding of fact which is not shown to be perverse, in a second appeal in which there is no substantial question of law involved.

Consequently, finding no merit in this appeal, it is dismissed in limine, with no order as to costs.

25.05.2016
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(Amol Rattan Singh)
Judge