

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. 6252 of 2015 (O&M)
Date of Decision: February 09, 2016**

Ajmer through his LRs

... Appellants

Versus

Bhag Chand

... Respondent

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Ms. Shalini Atri, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J.(Oral)

This regular second appeal has been preferred by the appellants against the judgment and decree dated 04.05.2012 passed by learned Addl. Civil Judge (Senior Division), Narwana whereby suit filed by the respondent-plaintiff for possession has been decreed, as well as, against the judgment and decree dated 23.09.2015 passed by learned Additional District Judge, Jind, whereby appeal preferred by the appellants has been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit

for possession on the ground that the property in dispute measuring 4 marlas is part of rectangle and killa no. 257//16/15 and is owned by him as a co-sharer. The defendant has no concern with the said property but in the year 2002 the defendant illegally encroached upon the said property by raising construction of his residential house. On 08.12.2013 the property was demarcated in the presence of the parties including the defendant. Thereafter the plaintiff requested the defendant many times to hand over the possession of suit land to him but to no avail. Hence, suit was filed.

Upon notice, the defendant appeared and filed written statement taking preliminary objections regarding maintainability; cause of action; locus standi; concealment of facts; limitation; court fee etc. On merit, it is averred that the defendant has raised construction on the property purchased by him. The defendant had purchased a plot measuring 5 marla comprised in Khasra No. 257//16/7, 16/4, 16/3/2 from Ratti Ram son of Matu and Todar Mal son of Mukhia by virtue of a registered sale deed bearing no. 616 dated 01.06.2001. Before taking the possession of the plot, the property was demarcated and four-wall was built and neither the plaintiff nor anybody else objected to the construction. The defendant has not encroached upon any part of the property owned by the plaintiff and the plaintiff has no concern with the residential house of the defendant, which he has raised on his own property. The plaintiff had constructed his house and placed his battens on the wall of the defendant promising to bear half of the expenses. Thus the plaintiff was fully aware of the construction from the very beginning.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “1. *Whether defendant is in unauthorized possession over the suit property in question without any legal right? OPP.*
2. *If issue no.1 is proved, whether plaintiff is entitled for decree of possession as prayed on the grounds taken in the plaint? OPP.*
3. *Whether plaintiff has no locus standi to institute suit? OPD.*
4. *Whether the plaintiff has suppressed material and true facts? OPD.*
5. *Whether suit is barred by limitation? OPD.*
6. *Whether suit is bad for non-impleadment of necessary parties? OPD.*
7. *Whether suit is bad for payment of proper court fee? OPD.*
8. *Relief.”*

The Court of first instance, after appreciating the evidence on record, decreed the suit vide judgment and decree dated 04.05.2012. Against that, defendants preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 23.09.2015. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellant has submitted that the following substantial questions of law formulated in para no. 5 of grounds of appeal, arise for consideration in this second appeal:-

- “a) *Whether the impugned judgments and decrees passed by both learned courts below are correct as per the demarcation report prepared by PW2 Parkash Chand in collusion with plaintiff/respondent?*
- b) *Whether it is upon the respondent/plaintiff to prove the thumb impression/signature upon demarcation report as same are denied by appellant/plaintiff?*
- c) *Whether the learned trial Court rightly rejected the plea of appellant/defendant whereby he claims over the property on the basis of sale deed No. 616 dated 01.06.2001?*

- d) *Whether the judgments and decrees passed by both the Courts are perverse, hence is liable to be vitiated?*
- e) *Whether the demarcation report is prepared as per the rules framed by Financial Commissioner as provided under Section 100 of the Land Revenue Act?"*

Learned counsel for the appellant contended that the findings recorded by both the Courts below are against law, without appreciation of facts and not sustainable in the eyes of law. The judgments and decrees of both the Courts below are based on conjectures and surmises. Therefore, the impugned judgments and decrees are liable to be set aside.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

Both the Courts below, after appreciating the evidence on record, have recorded concurrent findings of fact. The findings of fact recorded by the lower appellate Court are as under:-

"15. At the outset, the calculation furnished by learned counsel for appellant-defendant is wrong as figure 29 Karam is nowhere mentioned in site plan Ex.PW2/C, however, the length of of Killa No.257//16/15 is 24 +12 Karam on East and west side whereas length on North and South side is 42+40 Karam. Now applying the formula, the area would come around 4 Karam which is equal to area as stated in Jamabandi Ex. P1. Therefore, respondent-plaintiff is recorded as owner of land measuring 0 Kanal 4 Marla in Killa No. 257//16/15 as per Jamabandi Ex.P1. Further, the respondent-plaintiff has discharged his burden to prove that appellant-defendant is in unauthorised possession of suit land. He relied upon report of local Commissioner Ex.PW2/A, memo of presence Ex. PW2/B and site plan Ex.PW2/C. A perusal of demarcation report reveals that it was prepared by PW2 Parkash Chand, Kanungo after fixing three pucca points in accordance with the rules

framed by Finance Commissioner as provided under Section 100 of Land Revenue Act. Even this witness has reiterated in his cross-examination that the points (sidda/Pathar) from where demarcation was done, were ascertained in the presence of appellant-defendant and they were correct.

16. On the other hand, appellant-defendant failed to rebut the evidence adduced by the respondent-plaintiff. The appellant-defendant has even denied is thumb impression on the attendance sheet Ex. PW2/B whereas his own witness DW1 Subhash has deposed that respondent-plaintiff had got demarcated his land and Ajmer put his signature on the report which fortifies the claim of respondent-plaintiff that appellant-defendant was present while demarcation was conducted. No other evidence was adduced by the appellant-defendant to rebut the evidence of respondent-plaintiff, therefore, it is conclusively proved that appellant-defendant is in the unauthorized possession of disputed land.

17. The contentions of learned counsel for appellant-defendant that his residential house was old one and constructed in the year 2002 which is further proved from civil suit No. 188 of dated 26.05.2004 decided on 05.12.2006 by the then learned A.C.J (SD), Narwana, is also devoid of merits as it does not prove that respondent-plaintiff had any knowledge regarding the unauthorized possession made by appellant-defendant before the year 2003. Further factum of aforesaid civil suit is beyond the pleadings of appellant-defendant as he did not plead it in his written statement.

18. Lastly, the contention of learned counsel for appellant-defendant that if the learned lower Court had reached to conclusion that appellant had made encroachment on disputed land then some alternative way should have been suggested in order to save the both houses of the parties, is also devoid of merits. Efforts were made by this court also to convince the parties to arrive at amicable settlement but all were in vain,

therefore, it now becomes the obligation of court to finally determine the rights of parties as per law.

19. In view of the discussion made above, I hold that the appellant/defendant has failed to prove his case and the learned court below has dealt with the matter in right perspective and has rightly returned the findings on all the issues. No interference of this court is required in well reasoned judgment of learned court below. So, findings of learned court below are hereby affirmed on all the issues. There is no illegality or infirmity in the impugned judgment and decree passed by the learned lower court. Therefore, finding no merit in the appeal, the same is hereby dismissed with costs. The judgment and decree dated 04.05.2012 passed by learned lower court is upheld and affirmed. Decree sheet be drawn accordingly.....”

Concurrent findings of fact have been recorded by both the Courts below. Findings recorded by the Courts below are based on documentary evidence. Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, said findings of fact do not warrant interference in second appeal. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

February 09, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge