

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

**RSA No.992 of 2010 (O&M)
Date of decision: 22.12.2017**

Anita

.....Appellant

Versus

Bharto and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.S. Malik, Advocate,
for the appellant.

Mr. Vinod Gupta, Advocate,
for respondent No.1.

None for respondent No.3.

Ritu Bahri, J.

Defendant No.3-appellant has come up in appeal against the judgment dated 09.12.2009 passed by the Additional District Judge (Fast Track Court), Rohtak, dismissing an appeal against the judgment and decree dated 04.11.2006 passed by the Civil Judge (Junior Division), Rohtak, whereby suit filed by plaintiff-respondent No.1 for possession and permanent injunction, has been decreed.

Smt. Bharto.-plaintiff (respondent No.1 herein) filed a suit for possession and permanent injunction to the effect that she had purchased a plot measuring 249 sq. yards on bye-pass road, Kishanpura from Lotan Singh, vide registered sale deed No.3045 dated 24.11.1975, which was bounded as under:-

East : Plots of defendants

West : House of Rajinder Singh
North : Gali 20' wide
South : House of Randhir

Defendant Nos.1 and 2 (respondent Nos. 2 and 3 herein) were also having their three plots measuring 231 sq. yards on the eastern side of the plot of plaintiff. Defendant No.1 was owner of plot adjacent to the plot of plaintiff and defendant No.2 was owner of plot adjacent to the plot of defendant No.1. They had started construction of their houses. However, at the time of construction of their houses, both of them had encroached upon the plot of plaintiff to the extent of four feet, which was shown in red colour in the site plan attached with the plaint. The plaintiff had requested them not to encroach upon her land, but all in vain. Hence, the suit.

Upon notice, defendant No.1 (respondent No.2) filed his written statement stating therein that he had already sold his plot to defendant No.3-Anita (appellant), therefore, he had no concern with the same.

Thereafter, Anita (appellant) was impleaded as defendant No.3 in the suit and defendant No.1 was deleted from the array of defendants.

Defendant Nos.2 and 3 filed their separate written statements taking preliminary objections with regard to maintainability of suit; cause of action locus standi, estoppel, suit bad for mis-joinder and non-joinder of necessary parties etc. On merits, defendant No.2 had stated that the plaintiff had suppressed the true facts and had given wrong dimensions of her plot. It was stated that defendant No.2 was owner in possession of a house, which was constructed on the plot measuring 393 sq. yards. He had not encroached upon the land of the plaintiff. Defendant No.3 had pleaded that she was owner of plot purchased by her from Raj Singh (defendant No.1),

1982 and thereafter, filled the foundations. At that time, the plaintiff did not raise any objection. When she purchased the plot, its foundations were already filled up and were intact. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Replication to the written statement was filed controverting the allegations made in the written statement and reiterating those of the plaint.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff owned and possessed the plot in dispute detailed in para No.1 of the plaint? OPP
2. Whether the defendant Anita and
Ram Kumar encroached upon the portion shown in red colour in the site plan, if so, to what effect? OPP
3. If issue No.2 is proved, whether the plaintiff is entitled for a decree of permanent injunction as prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit is false and frivolous? OPD
6. Whether the plaintiff has no cause of action? OPD
7. Whether the suit is time barred? OPD
8. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
9. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit. Appeal against the said judgment also met the same fate.

Heard.

Om Parkash, power of attorney holder of plaintiff, appeared as PW-1 and deposed that as per site plan Ex.P2, plaintiff was owner of plot measuring 249 sq. yards, which was purchased by her on 24.11.1975.

Mehtab Singh (PW-2) deposed that Anita (appellant), who had purchased

the suit property from Raj Singh had encroached upon the plot of plaintiff to the extent of 4 x 52 feet. He further deposed that Anit and Ram Kumar had left a portion of land measuring 4 x 52 feet towards eastern side of their plots and had encroached upon the equivalent area of the plot of plaintiff. Ram Kishan, Retired Kanungo (PW-8), who was appointed as Local Commission, had demarcated the suit property and submitted his report Ex.PW8/A along with its related documents Ex.PW8/B to Ex.PW8/D. He had deposed that after affixing *pukhta nishanat*, he had demarcated the suit property and found that owner of adjacent plot had encroached upon the land of the plaintiff, which was marked as LC in site plan Ex.PW8/C. Previously, the said plot was owned by Raj Singh and thereafter, he had sold the same to Anita.

On the other hand, defendants had examined Om Parkash, Building Inspector (DW-1), who deposed that site plan bearing No.506, Ex.D1, had been sanctioned on 05.02.1980. Hawa Singh Malik, Draftsman was examined as DW-2, who had proved the estimate report as Ex.D2. Anita-defendant No.3 (DW-3) and Ram Kumar-defendant No.2 (DW-4) deposed that they were in possession of their respective plots and had not made any any encroachment on the land of the plaintiff.

Ownership of the plaintiff over the plot was not in dispute. As per report, Ex.PW8/A, given by Ram Kishan, Local Commissioner (PW-8), there was encroachment on the plot of plaintiff. He had been cross-examined at length, but nothing fruitful favouring the defendants could be brought out, which may diminish the evidentiary value of his testimony and report Ex.PW8/A. While decreeing the suit, trial Court had given a finding that in written statement filed by Anita-defendant No.3, she did not

specifically denied the encroachment and her reply was vague and evasive. Moreover, Ram Kumar (DW-4), in his cross-examination, had admitted that he had encroached upon the land of Anita up to four feet width and Anita (defendant No.3) had encroached upon the plot of plaintiff (Bharto). He had admitted that he was in possession of 4 x 52 feet of land apart from the land of his plot consisting 393 sq. yards. Admission of Ram Kumar (DW-4) with respect to the encroachment was held to be admissible against Anita, as interest of all the parties was joint. Keeping in view the report given by Local Commissioner (PW-8) and admission of Ram Kumar (DW-4), trial Court decreed the suit of the plaintiff.

On appeal, lower Appellate Court has affirmed the finding given by the trial Court and held that Om Parkash (PW-1), power of attorney of plaintiff, was the husband of plaintiff and not a stranger. He had all the knowledge about the facts of the case. Even the report of the Local Commissioner had been rightly accepted by the trial Court in view of the judgment passed by this Court in **Piara Lal vs. The Liquidator Cooperative Store, Kapurthala and others**, 2004 (2) CCC 573, wherein it has been held that Local Commissioner can be appointed exparte without issuing notice to the other party. Report of the Local Commissioner is not admissible in law unless he was examined in Court and opportunity was given to the other party to cross-examine him, which in the present case has been done.

Appellant-Anita has taken a plea of adverse possession and submitted that after purchasing plot from Raj Singh (deleted defendant No.1), she is in continuous possession of the same. To the contrary, the plaintiff has proved his title over the suit property by produce sale deed, Ex.P3 and by examining Pawan Kumar Clerk from the Office of Sub

Registrar, Rohtak (PW-3). Execution of the sale deed has not been denied by any person.

After going through the impugned judgments, it is apparent that plaintiff (respondent No.1) is owner of the suit and defendants have encroached upon the same upto 4 x 52 feet length in the eastern side. In these circumstances, the suit of the plaintiff has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

22.12.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No