

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.481 of 2011 (O&M)

Date of Order: 12.09.2017

Gulzari Lal

..Appellant

Versus

Madan Gopal Sharma and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Balbir Singh, Advocate,
for the appellant.

Mr. Puneet Jindal, Sr. Advocate, with
Mr. Varun Goyal, Advocate,
for the respondents.

ANIL KSHETARPAL, J (Oral)

Defendant no.1 is in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Defendants had filed a suit for possession with respect to land measuring 3 marlas on the ground that father of the plaintiff was allotted/sold land measuring 13 marlas, vide sale certificate dated 27.04.1965. Plaintiff had also challenged the sale deed in favour of defendant no.1 executed by defendant no.2, dated 06.01.1997. Defendant no.1, on the other hand, pleaded that he has purchased the property from defendant no.2, vide sale deed dated 06.01.1997.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff.

Defendant no.1-appellant filed the first appeal. Learned first appellate Court after re-appreciating the evidence available on the file, dismissed the appeal and upheld the judgment of the trial Court.

During the pendency of the present appeal, a Local

Commissioner was appointed. The Local Commissioner has given his report dated 06.04.2016. Objections to the aforesaid Local Commissioner's report have been filed. A reading of the report of the Local Commissioner would show that the demarcation was carried out without determining the 'pacca' points which are mandatory as per the instructions of Financial Commissioner duly incorporated in the High Court Rules and Orders. The Local Commissioner has reported that the total area of the property shown in yellow colour is 12.41 marlas and therefore, there is encroachment only to the extent of .59 marla.

Defendant-appellant had staked his claim with respect to ownership on the basis of sale deed dated 06.01.1997. Janak Raj had executed the sale deed in favour of the plaintiff. No evidence has been produced on the file to prove the title of Janak Raj-vendor. In fact the appellant while appearing in the witness box as DW7 has himself demolished his case. The statement of the appellant reads as under:-

“I did not see any proof of ownership of the property in question at the time of execution of the sale deed. The property was only pertaining to possession. I purchased possession only. I know the plaintiff. I also knew Des Raj son of Ganda Ram. It is correct that government has allotted plots to the people. I do not know whether any plot was allotted to Des Raj. Madan Gopal was in New Delhi but today I do not know in which country he is. I had no discussion with Madan Gopal. I know Chaman Lal present in the Court. He is the real brother of Madan Gopal Sharma. Janak Raj is the original resident of

village Lakhanpal. It is incorrect to suggest that I have deposed falsely.”

Once it is established on the file that Janak Raj was not the owner of the property, he could not transfer the title of the property in dispute in favour of the appellant-defendant No.1, whereas he was stated that he had purchased only the possessory rights.

Learned counsel for the appellant has vehemently argued that in view of the report submitted by the Local Commissioner, decrees need to be modified to the extent that the plaintiff is entitled to only .59 marlas.

I have considered the submission of learned counsel for the appellant.

A reading of the report would show that the Local Commissioner has not mentioned as to what part is in possession of the plaintiff. The Local Commissioner has just reported that the portion shown in yellow colour is 12.41 marla. Once the Local Commissioner is found to have started the measurement without determining the 'pacca' points and without following the procedure prescribed in the High Court Rules and Orders, such report of Local Commissioner cannot be relied upon.

Learned counsel for the appellant has further submitted that the land in dispute is situated within “Abadi Deh”, therefore, whosoever is in possession must be considered as owner.

I have considered the submission of counsel for the appellant. It is not in dispute that father of the plaintiff was allotted land by the government vide sale certificate dated 27.04.1965. It is the case of the plaintiff that in family partition 3 marlas land fell to the share of the plaintiff. Defendant also is not claiming merely on the basis of possession.

He claims that he had purchased possessory rights. He has failed to prove that his vendor was having title over the property .

In these circumstances, there is no force in the argument of learned counsel for the appellant.

There is a concurrent findings of fact arrived at by the Courts below. I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below particularly in view of the statement given by defendant no.1-appellant in the Court. The regular appeal is ordered to be dismissed.

September 12, 2017
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(ANIL KSHETARPAL)
JUDGE

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