

RSA No. 1849 of 2016 (O&M)

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

RSA No. 1849 of 2016 (O&M)

Date of Decision: 12.7.2017

Tejpal

.....Appellant

Vs.

Jai Narain and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 4923-C-2016

Applicant seeks condonation of delay of 8 days in filing the appeal.

After hearing learned counsel for the applicant, instant application is allowed, for the reasons stated therein. Delay of 8 days in filing the appeal is condoned.

CM stands disposed of.

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Unsuccessful plaintiff is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration and permanent injunction was dismissed, suit land having been found absolute ownership of the defendant-respondent

Gram Panchayat.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that plaintiff filed a suit for declaration and permanent injunction against the defendants, inter alia, on the allegations that plaintiff was owner in possession of a residential house measuring 305 square yards, as detailed and described in para No.1 of the plaint and there was a 20 feet wide street on the eastern side of said house and another 16 feet wide street was on northern side of said house. Plaintiff again claimed that order dated 04.11.2008 passed by Assistant Collector Ist Grade, Ganaur was wrong, illegal, null and void and was not binding on the rights of plaintiff and was liable to be set aside on the grounds that there was a 20 feet wide street on the eastern side of house of plaintiff and another street on the northern side of said house was 16 feet. Defendant No.2 Gram Panchayat was owner of another street adjoining the house of plaintiff and map of Gram Panchayat shows the width of street as 20 feet, which was situated on the eastern side and width of street on northern side was 16 feet and the streets were in existence as per the site plan. There was no encroachment upon the same and defendant No.1 filed ejectment petition on false grounds only to harass the plaintiff and order dated 04.11.2008 was passed by Assistant Collector Ist Grade, Ganaur, without any document pertaining to streets.

Again, it was claimed that order dated 04.11.2008 was self contradictory and was not a speaking order, thus, said order cannot be enforced and under the garb of said order, defendants wanted to demolish the house of plaintiff, for which, they have no right, title or concern and if the defendants are successful in doing so, plaintiff would suffer an

irreparable loss. Again, plaintiff claimed that he requested the defendants not to demolish the house of plaintiff and dispossess the plaintiff from the said house forcibly in view of order dated 04.11.2008, but they were adamant.

Having been put to notice, defendant No.1 appeared and filed his written statement, raising more than one preliminary objections. However, defendant No.2-Gram Panchayat was proceeded against ex parte. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is owner in possession of a residential house as mentioned in para No.1 of the plaint? OPP
2. Whether the impugned order dated 04.11.2008 passed by A.C. Ist Grade, Ganaur is wrong, illegal and liable to be set aside on the grounds mentioned in the plaint? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPP
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the plaintiff has concealed the material facts from the court? OPD
7. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case, by leading cogent and convincing evidence. Accordingly, his suit for declaration and permanent injunction was dismissed by the learned trial court, vide its impugned

judgment and decree dated 16.4.2014. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 15.9.2015. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the appellant.

Learned counsel for the appellant could not raise any meaningful argument in favour of the appellant and rightly so, it being a matter of record, as neither any supporting material is available in favour of the appellant, nor concurrent findings recorded by both the learned courts below are based on any illegal or perverse approach. Ownership of the respondent-Gram Panchayat over the suit property has not been disputed by the learned counsel for the appellant.

It is a matter of record that at the instance of defendant-Gram Panchayat, ejectment order dated 4.11.2008 (Ex. P3) had been passed against the plaintiff by the competent authority. However, instead of challenging the said ejectment order before higher authorities under the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to Haryana, ('The Act' for short), plaintiff filed the present suit for setting aside the abovesaid ejectment order. In such a situation, even suit of the plaintiff-appellant was not maintainable in the present form. Non-maintainability of the suit apart, plaintiff miserably failed to prove his pleaded case, by leading cogent and convincing evidence. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Appellant being plaintiff, onus was on him to prove his case as

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per his pleadings. It is also pertinent to note here that during the pendency of the ejectment proceedings against the appellant, a retired Naib Tehsildar was appointed as Local Commissioner, who carried out the demarcation of the suit property and found that plaintiff has caused encroachment on the public path up to 16 feet. Placing reliance on the said demarcation report, ejectment of the plaintiff-appellant was ordered by the competent authority vide order dated 4.11.2008 (Ex.P3).

Appellant ought to have challenged the said ejectment order before higher authorities under the Act, however, he did not do so, for the reasons best known to him. Under these undisputed facts and circumstances of the case, neither law nor equity was in favour of the plaintiff-appellant and he was bound to fail. That is what has been held by the learned courts below, while recording their concurrent findings of facts, because of which the impugned judgments and decrees deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 12 to 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“The dispute in the present case is with regard to the legality of ejectment order Ex.P-3 and order Ex.P-3 reflects that Local Commissioner Shri Dharampal, Retired Naib Tehsildar was appointed, who carried out the demarcation on 26.02.2006 and specifically concluded the encroachment by present appellant/plaintiff over 16 feet of Rasta bearing revenue No.205. In this way, the order Ex.P-3 is based on the

demarcation report, but in the plaint, there is no assail with respect to the demarcation carried out by Local Commissioner and again, it is nowhere pleaded or proved that the demarcation carried out by Local Commissioner was not in accordance to the standing instructions or in violation of the Hon'ble High Court rules and order and even the demarcation report, which was made basis, while passing order Ex.P-3 has not been placed on record and in the given scenario, merely alleging the ejectment order Ex.P-3 to be illegal, null and void, no such conclusion can be drawn by the court, because until and unless, the demarcation report dated 26.02.2006, which was made basis while passing order Ex.P-3 is proved to be illegal, null and void having been carried out without following the standing instructions and norms, the ejectment order Ex.P-3 cannot be termed to be illegal.

In addition to all this, if the field book Ex.P-4 is seen, certainly, the property shown at serial No.105, cannot be the property in dispute in ejectment order Ex.P-3, because according to site plan of Abadi of village Ex.P1, on two sides, there is Rasta and when this site plan is the site plan of village Abadi and no revenue number is there, certainly, Rasta No.205, which was found to be encroached upon by the plaintiff is at some other place and plaintiff may have other property adjoining to Rasta No.205 or Rasta No.205 may be adjoining the village Abadi and as when the disputed property as detailed and described in para No.1 of the plaint could not be the property No.105 in the village site plan Ex.P-1, certainly, on the basis of site plan Ex.P-1 or the site plan Ex.P-2, whose Draftsman was not examined, order Ex.P-3 could not be proved to be illegal, as order Ex.P-3 is based on demarcation of Local

Commissioner dated 26.02.2006 and unless and until, the demarcation report dated 26.02.2006 is proved to be illegally or the demarcation carried out in violation of the standing instructions and Hon'ble High Court rules and order, the order Ex.P-3 cannot be termed to be illegal, void and not binding, as the order Ex.P-3 was passed by competent authority i.e. Assistant Collector Ist Grade and as such, there appears no illegality or infirmity neither in the order Ex.P-3 nor in demarcation report dated 26.02.2006.

One another fact is again worth noticing that as per para No.1 of the plaint, plaintiff is claiming total area in his ownership and possession as 305 square yards, whereas when PW-3 Dharam Singh, brother of the plaintiff was examined, in his cross examination, PW-3 Dharam Singh claimed that he has seen the revenue record and in the record, Ram Kishan son of Baldewa is shown as owner and from said Ram Kishan son of Baldewa, the property was purchased by them and then, it was claimed that the property was ancestral of Ram Kishan and the area is about 200/225 square yards. From these depositions, again, it is evident that PW-3 brother of plaintiff is disclosing some different area, whereas in the plaint, the total area is being claimed to be 305 square yards and even presuming that plaintiff purchased the land from Ram Kishan son of Baldewa or Kisna son of Baldewa, shown as owner of the property No.105 in field book Ex.P-4, even then, the property shown at serial No.105 in Ex.P-4, cannot be said to be the property, which is detailed and described in para No.1 of the plaint.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not

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refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

12.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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