

RSA No.3979 of 2016

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

**RSA No.3979 of 2016 (O&M)
Date of Decision: 19.1.2017**

Surjit Kaur

.....Appellant

Vs.

Gurpreet Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Gagandeep Singh Sirphikhi, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant regular second appeal, at the hands of the plaintiff, is directed against the judgment and decree dated 9.11.2015 passed by the learned Additional District Judge, Gurdaspur, whereby first appeal of the plaintiff was dismissed and the judgment and decree dated 30.7.2012 passed by learned trial court, dismissing the suit of the plaintiff, were upheld.

Brief facts of the case, as recorded by learned trial court in para 2 of its judgment, are that plaintiff was the co-sharer/co-owner in possession over the land measuring 6 kanals 17 marlas bearing khasra No. 2238/2, as mentioned in head note 'A' of plaint to the extent of 26/137 share. That the defendant was neither co-sharer nor he had got any right, title and interest in the suit property, i.e. the said khasra numbers. The suit property was the part

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and parcel of khasra No. 2238/3. Defendant had illegally and forcibly with the help of huge persons, who were about 15/20 numbers, illegally and forcibly occupied the suit property on 28.7.2005 and started to raise construction over it and the defendant had put the lintel over it, in spite of the protest of the plaintiff. That the defendant was head strong person and openly threatened the plaintiff with dire consequences of life. Plaintiff was entitled to get the possession of the suit property after removal of the malba and structure, which had been raised by the defendant illegally and forcibly. Defendant had further threatened to change the nature of the suit property by raising huge construction over it and to change the nature of the suit property, which was at present in existence at the spot. Defendant had got no right to change the present existing position of the suit property. Plaintiff requested the defendant to desist from threatened aims and design.

Defendant-respondent was put to notice and he filed his written statement contesting the suit of the plaintiff. After completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for mandatory injunction, as prayed for?/-OPP
2. Whether plaintiff is entitled for permanent injunction, as prayed for? OPP
3. Whether the plaintiff has no locus standi to file the present suit?OPD
4. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction?OPD
5. Whether plaintiff has not filed the correct site

plant? OPD

5-A Whether property in dispute is part and parcel
of khasra No. 2238/1?OPD

8. Relief?

In order to prove their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has miserably failed to prove her case. She hardly brought on record any meaningful evidence. On the other hand, defendant brought on record cogent evidence, in support of his pleaded case. Finally, learned trial court dismissed the suit of the plaintiff, vide impugned judgment and decree dated 30.7.2012.

Feeling aggrieved against the abovesaid judgment and decree passed by the learned trial court, plaintiff filed her first appeal, which also came to be dismissed by learned first appellate court, vide impugned judgment and decree dated 9.11.2015. Hence this second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

Placing reliance on the order of the Hon'ble Supreme Court in **Shreepat VS. Rajendra Prasad and others, 2000 (3) ICC 741**, learned counsel submits that learned trial court ought to have exercised its jurisdiction under Order 26 of the Code of Civil Procedure, appointing a Local Commissioner to identify the suit land, because there was serious dispute between the parties about the identity of the land. He prays for setting aside the impugned judgments and decrees, by allowing the present appeal.

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Having heard learned counsel for the appellant at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the impugned judgments and decrees passed by both the learned courts below have not been found suffering from any patent illegality or perversity, the same deserve to be upheld. Present appeal is without any merit which is liable to be dismissed. To say so, reasons are more than one, which are being recorded hereinafter.

It is the settled proposition of law that appellant being plaintiff, onus was on her to prove her case by leading cogent evidence, including the identity of the suit land. However, she miserably failed to do so. After going through the judgment in Shreepat's case (supra), cited by learned counsel for the appellant, the same has not been found to be of any help to the appellant, being distinguishable in law. It is so said, because order passed in Shreepat's case (supra) was in a suit for declaration and was decreed by learned courts, which was further upheld by this Court, whereas present one was a suit for mandatory injunction and plaintiff has failed to lead any plausible evidence, so as to prove her case. In fact, present one was a case without any such evidence which could have been said to be worth reliance. Since onus was on the plaintiff to prove her case and she failed to do so, learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Defendant produced as many as six witnesses, including Rachhpal Singh Patwari as DW3 and Narinder Mohan, Deed Writer, as DW 5. DW-3 proved on record demarcation proceedings dated 28.11.2000,

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which culminated into rapat No. 107. As per this relevant piece of evidence, demarcation was carried out by the concerned revenue officers at the site, strictly in accordance with law and they arrived at a just conclusion which was recorded in rapat No. 107. There was no contrary evidence produced by the plaintiff, either while leading her evidence in affirmative or in her evidence in rebuttal. In this view of the matter, it can be safely concluded that learned courts below were well justified to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

Facts of the case as well as evidence brought on record were re-appreciated by learned first appellate court before recording its own cogent findings. Relevant observations made by learned first appellate court in para 16 of the impugned judgment, available at page 47 of the paper book, which deserves to be noticed here, read as under:-

“The learned counsel for the appellant/plaintiff further contended that the respondent/defendant had no placed on record any site plan to disprove the case of the appellant/plaintiff but his contention of learned counsel for the appellant/plaintiff also found to be without any merit. From the perusal of record in order to prove the possession of land bearing Khasra No. 2238/1 the respondent/defendant has examined DW-2 Balwinder Singh Kanungo who stated in his evidence that the demarcation of khasra No. 2238/1 was conducted after erecting pucca point at the spot. He further deposed that the relevant entries in the in the roznamcha vakiat was

entered in the rapat No. 107 dated 28.11.2000. His version is also supported by the evidence of DW-3, who has stated in his evidence that as per record brought by him, the relevant entries was made in the Rapat Roznamcha and he proved the copy of same as Ex.DW-2/1. It is proved from Ex.D2/1 that demarcation was conducted qua khasra No.2238/1 on the application of Puran Chand and after demarcation the report was submitted and relevant entry was made in the daily roznamcha vakiat vide rapat No. 107. It is found from the rapat Ex.DW2/1 that the area in dispute was belonging to khasra No. 2238/1. Thus, it is proved from the testimonies of DW-2 and DW-3 that the land in dispute is part and parcel of khasra No. 2238/1. To controvert the testimonies of DW-2 and DW-3, the appellant/plaintiff has not examined any revenue official in rebuttal evidence, to prove the fact that wrong demarcation was conducted at the spot without appreciating the surrounding circumstances. It is not the case of the appellant/plaintiff that she was forcibly dispossessed by the defendant/respondent. The case of the appellant/plaintiff was revolved around the identity of the property but appellant/plaintiff has failed to prove the same. Therefore, the instant appeal being without meritorious is liable to be dismissed.”

Under the abovesaid circumstances, the impugned judgments

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and decrees have not been found suffering from any patent illegality or perversity, which may warrant interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Courts below have recorded concurrent findings of facts. No substantial question of law which is sine qua non for entertaining second appeal, has been found involved in the present case and the impugned judgments and decrees deserve to be upheld, for this reason as well. In this regard, reference can be made to the judgment of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286.**

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.

(RAMESHWAR SINGH MALIK)
JUDGE

19.1.2017
Ak Sharma

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