

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.4693 of 2015
Date of decision:18.5.2017**

Piara Lal

...Appellant

Versus

Joginder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Keshav Pratap Singh, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendant has approached this Court by way of instant regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for vacant possession and permanent injunction filed by the plaintiff qua the suit property was decreed by the learned trial court, vide its impugned judgment and decree dated 9.12.2014 and the first appeal filed by the defendant was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 13.5.2015.

Brief facts of the case, as noticed by the learned first appellate Court in para 3 of the impugned judgment, are that the plaintiff was relying upon copy of jamabandi for the year 2003-04 alongwith akshajra to show that he was owner of 06 marlas of land which was part of Khasra No.103/1/1(1-15) of Khata No.37/50 situated in the area of village Mehndipur, H.B.No.401, Tehsil Balachaur, District SBS Nagar. Plaintiff averred that defendant who owns land adjoining to the land of plaintiff on its eastern side encroached upon 06 marlas of land, belonging to the plaintiff and had raised construction over it in the beginning of May 2009,

in the absence of plaintiff. Defendant was not vacating the property despite repeated requests and despite the fact that demarcation report dated 21.11.2009 had also shown the defendant to be in illegal possession. It was averred that possession of the defendant over disputed suit land was that of a trespasser and he was bound to hand over the possession to him but he flatly refused to do so.

Having been served in the suit filed by the plaintiff, defendant put appearance and filed his contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiff. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- 1 Whether plaintiff is entitled to permanent injunction as prayed for?OPP
- 1-A Whether plaintiff is entitled to possession of 06 marlas land, marked as ABCD in the site plan of plaintiff? OPP
2. Whether plaintiff is estopped from filing the present suit by his own act and conduct?OPD
- 3 Whether the plaintiff has produced wrong site plan?OPD
- 4 Whether suit of plaintiff is not properly valued for the purpose of court fee and jurisdiction?OPD
- 5 Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case by leading cogent and convincing evidence.

Accordingly, suit of the plaintiff was decreed by the learned trial court, vide its impugned judgment and decree dated 9.12.2014. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 13.5.2015. Hence this regular second appeal, at the hands of defendant.

Heard learned counsel for the appellant.

Ownership of the plaintiff-respondent, on the basis of a registered sale-deed dated 31.3.2009 Ex.P9 had never been in dispute. Plaintiff purchased the suit land out of Khasra No.103/1/1 (1 kanal-15 marlas) from one Ram Kishan in the year 2009. Defendant was owner of the adjoining Khasra No.103/2, who had illegally encroached upon part of suit land. Before filing the suit, plaintiff-respondent approached the revenue authorities, seeking demarcation of the suit property. Demarcation was carried out by the concerned revenue officials. Copy of the application moved by the plaintiff to the concerned Tehsildar, demarcation report and site plan were duly proved on record as Exhibits P13/A, P13/B and Ex.P13/C, respectively.

Again, during the course of proceeding of the suit, learned trial court appointed Gurdev Singh, Field Kanungo as Local Commissioner, who carried out the demarcation of the suit property in the presence of both the parties. Plaintiff examined this local commissioner Gurdev Singh as PW-1. Plaintiff examined himself as PW-2. Demarcation reports were proved as Ex.P1 to Ex.P4. Site plan Ex.P5, copy of jamabandi for the year 2003-2004 of Khasra No.1031/1 as Ex.P6, Aks-Shijra as Ex.P7, copy of jamabandi for the year 2003-04 of Khasra No. 103/2 as Ex.P8, certified copy of sale-deed dated 31.3.2009 as Ex.P9, its endorsement as Ex.P10, earlier demarcation

report dated 21.11.2009 as Ex.P13, its presence sheet as Ex.P13/A, certified copy of the application for demarcation as Ex.P13/B and certified copy of Naqsha Tawafat as Ex.P13/C. With the above-said overwhelming documentary as well as oral evidence, plaintiff duly proved his case and his suit was rightly decreed by the both the learned courts below because of which the impugned judgments and decrees deserve to be upheld.

It is also a matter of record that defendant-appellant did not raise any objection against the demarcation report furnished in the court by local commissioner PW-1 Gurdev Singh, Field Kanungo. Further, there was no contrary evidence produced by the defendant. Thus, the abovesaid voluminous documentary evidence produced by the plaintiff had gone virtually un rebutted. Once the abovesaid documentary as well as oral evidence was found speaking volumes in favour of the plaintiff, he was bound to succeed, because the defendant miserably failed to prove his pleaded case. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of this Court in **Malkiat Singh and another Vs. Lal Singh and others, 2010 (65) RCR (Civil) 436, Bahadur Singh Vs. Commissioner, Gurgaon Division, Gurgaon and others, 2011 (54) RCR (Civil) 292, Haryana State and others Vs. Gokal Chand and others, 2011 (52) RCR (Civil) 674 and Bhupinder Singh Vs. Chattar Singh, 2016 (1) PLJ 341.**

Before arriving at its judicious conclusion, the learned first

appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 12 of its impugned judgment, which deserve to be noticed here, read as under:-

Admittedly, the defendant is neighbourer of the plaintiff on his East side. The disputed property measuring 6 marlas is a small strip of land in between the plots of plaintiff Joginder Singh and defendant Piara Lal. The plaintiff claims that the suit property is a part of khasra no.103/1/1 which was encroached upon the defendant in the year 2009, whereas the defendant claims that suit property is a part of khasra no.103//2 and he had purchased this property from Anant Ram vide sale deed dated 18.05.2001 and had thereafter raised construction over the same.

Therefore, the only point of determination in this case is whether the suit land is a part of khata no.37/50 and khasra no.103/1/1(1-15) and this dispute can be resolved only through demarcation of the suit land. In this regard, Ld.trial court has appointed Local Commissioner to demarcate the property and Local Commissioner Gurdev Singh, Field Kanugo, Balachaur has been examined as PW-1 who has deposed that he conducted the demarcation of khasra no.103/1/1 and 103/1/2 on 07.07.2012 and he proved the demarcation report of even date as Ex.P3 and naksha twafat Ex.P4. The witness also identified his handwriting and signatures on the report. The Field Kanugo PW-2 has stated that both the parties alongwith Sarpanch and other respectable persons were present at the spot at the time of demarcation. He stated that with the assistance of parties and respectable persons at the spot and as per record, the intervening boundary (watt) of khasra no.36/2/2 and 36/3 was considered to be correct. The North-West corner of khasra no.30/19/1 and North West corner of

khasra no.30//22/2 was considered as correct point. Thereafter, the complete demarcation was conducted after following the rules and regulation as per revenue department. On demarcation, it was found by Field Kanugo PW-2 that Piara Lal son of Atma Ram had illegal possession over 0 kanal 09 marlas of suit property on East side of khasra no. 103/1/1. It was further found that some rooms had been constructed on the disputed land. The Field Kanugo has also shown the location of the property under the illegal possession of Piara Lal at naksha twafat in green colour. In the light of detailed demarcation report placed on record by Revenue Official, there is no denying the fact that defendant in illegal possession of suit property. This witness was cross-examined at a length but nothing material came out of the cross-examination to bring out any discrepancy in the demarcation report given by him.

Fact situation in **Malkiat Singh's** case (supra) was very close to the facts of the case in hand. Relevant observations made by this Court in paras 8 and 9 of its judgment in **Malkiat Singh's** case (supra), which can be gainfully followed in the present case, read as under:-

“On the other hand, Kanwarpreet Puri, while making demarcation, took into consideration pucca thadas available at the spot, with the consent of the parties. Consequently, demarcation made by Kanwarpreet Puri cannot be said to be invalid or illegal in any manner. The mere fact that Kanwarpreet Puri did not record statement of the parties regarding their consent to pucca thadas would not invalidate his demarcation report. As noticed herein above, when lal pathars are not available, pucca thadas were rightly taken into consideration by the Local Commissioner for making demarcation. His demarcation report cannot be said to be invalid in any manner. On the other hand, learned counsel for the appellants conceded that objections preferred by the

present appellants against the aforesaid demarcation report in the concerned suit stand dismissed.

Both the courts below have concurrently found, on appreciation of evidence, that defendants have encroached upon the suit land, which admittedly belongs to the plaintiffs. The said encroachment is duly proved by demarcation report and other evidence. The aforesaid concurrent finding of the courts below cannot be said to be illegal or perverse in any manner. The same is based on proper appreciation of evidence. No question of law, much less substantial question of law arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.”

Reverting to the facts of the case in hand, it is concededly on a better footing than **Malkiat Singh's** case (supra). It is so said because objections were filed to the demarcation report in **Malkiat Singh's** case (supra), whereas defendant-appellant did not file any objections to the demarcation report, as noticed hereinabove. Similar was the fact situation in **Gokal Chand's** case (supra). Plaintiff has been found to have encroached upon the suit property, clear and undisputed title of which was that of the plaintiff-respondent. In this view of the matter, it is unhesitatingly held that both the learned courts below were well justified in recording their concurrent findings of facts and the impugned judgments and decrees deserve to be upheld, for this reason also.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question

of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

18.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No