

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

RSA-5090-2015 (O&M)

Date of Decision:- 20.09.2017

Daya Nand

.....Appellant

Versus

Naresh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Chaudhary, Advocate, for the appellant.

RITU BAHRI, J. (Oral)

CM-12178-C-2015

Heard.

For the reasons mentioned therein, the application is allowed. Delay of 88 days in filing the present appeal is hereby condoned.

RSA-5090-2015

Appellant-plaintiff (herein after to be referred as 'the appellant') has come up in Regular Second Appeal against the concurrent findings of facts recorded by both the Courts below whereby the suit for possession of land/bara, described in the headnote of the plaint, has been dismissed.

The case of the plaintiff is that the land in question was allotted in his name by the Consolidation Officer, Karnal and possession

was handed over to him and a mutation No.2240 was entered and sanctioned in his favour. After receiving the possession of the land in dispute, the plaintiff constructed boundary wall upon same and enjoying peaceful possession over the land/*bara* without any interference of any person. Now, defendant Nos.1 and 2 have illegally and forcibly encroached upon the part of *bara* and have constructed two *kacha* rooms in the same. The plaintiff has moved the application before Tehsildar, Panipat for demarcation and demarcation report also show the illegal possession of the defendants.

From the pleadings of the parties, the trial Court has framed the following issues on 19.11.2012: -

- “1. Whether the defendants have encroached upon the suit property?OPP
2. If issue no.1 is proved, whether the plaintiff is entitled to injunctions, as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Relief.”

Learned trial Court after going through the evidence led by the parties has returned the finding against the plaintiff on issues No.1 and 2 as there is no construction on the land in khasra No.381/3/1. Further, it has been observed that as per demarcation report (Ex.P3) submitted by PW3 Rajbir Singh, Kanoongo, upon which the appellant has relied upon, has not been conducted in accordance with the instructions issued by the Financial Commissioner, Haryana. PW3 has failed to point

out the specific portion of khasra No.381/3/1, which is alleged to have been encroached upon by the respondents. The plea taken by the plaintiff that compromise effected with defendant No.2 on 17.01.2013 has not been proved.

In appeal before the first Appellate Court, the Court has affirmed the findings on issues No.1 and 2 and held that the plaintiff has miserably failed to discharge the onus which was placed upon him to prove the alleged encroachment upon khasra No.381/3/1 by the respondents. Further, findings on issues No.3 and 4 were also recorded in favour of the respondents/defendants. Consequently, first appeal was also dismissed.

Having considered the submissions made by learned counsel for the appellant and having gone through the record of case file,, this Court is of the considered view that once the appellant/plaintiff has not been able to get the correct demarcation and has not been able to prove the compromise effected with defendant No.2, the present controversy does not call for any interference. There is absolutely no substantial question of law involved in the case, calling for interference, by way of present Regular Second Appeal.

Hence, the present Regular Second Appeal is without any merit and the same stands dismissed.

September 20, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No