

RSA No. 888 of 2015 (O&M)

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

**RSA No. 888 of 2015 (O&M)
Date of Decision: 14.7.2017**

Paraswarth Lal and others

.....Appellant

Vs.

Ranjit Lal

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of defendants, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby their counter-claim was dismissed and suit for injunction filed by the plaintiff was decreed by the learned trial court and first appeal filed by the defendants was also dismissed by the learned first appellate court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that defendants were owners in possession of 44 kanal 19 marlas land adjacent to the land of plaintiff in western side. The property of defendants was in western side, while property of plaintiff was in eastern side. Dispute between both parties has been with regard to northern wall/DOL over the property of appellants falling in khasra No. 896//2/3/3/1 as 6 karam, 896//2/3/3/7 as 4 karam and

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896//2/3/3/13 as 27 karam, meaning thereby total 37 karam in place of 31 karam. In nutshell, defendants were claiming the northern side of their property to be of 95 karam. It was the case of plaintiff that defendants' land was acquired at different junctures by State Government and different mutations were entered accordingly. However, the defendants, who were very clever persons, in collusion with each other got passed a decree in civil suit No. 180/85 titled as Pushpa Vs. Paaswarth Lal and others, wherein they misconstrued revenue record and got succeeded in preparation of Aks-sazra wherein northern wall was claimed to be of 95 karam in place of 90 only and tatima (amended) mutation was also got prepared. Now on the basis of this wrong revenue record, plaintiff was intending to encroach upon the property of plaintiff which was in eastern side. Plaintiff requested defendants several times to desist from their illegal design and not to make encroachment over the property of plaintiff but they finally refused to admit the genuine request of plaintiff.

Upon notice, defendants appeared and filed their contesting written statements, raising more than one preliminary objections. Plaintiff did not file any replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to the relief of injunction with respect to the disputed land on the grounds, so mentioned in the plaint?OPP
2. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
3. Whether the defendants are entitled to the relief as claimed for by them in the counter claim so filed on their behalf?OPD
4. Whether the suit is not maintainable?OPD

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5. Relief

With a view 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 counter claim filed by the defendants was misconceived and the same was dismissed whereas suit for injunction filed by the plaintiff was decreed vide impugned judgment and decree dated 24.9.2010. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 18.11.2014. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

The only short issue involved in the present case was, whether length of dividing line (Dol), on northern side of khasra No. 896//2/3 was 90 karams or 95 karams.

The ownership of both the parties qua their shares of land was not in dispute. Plaintiff-respondent was claiming length of this dividing line on northern side of khasra No. 896//2/3 as 90 karams whereas the appellants-defendants were claiming it to be 95 karams. Plaintiff proved on record sufficient and cogent evidence, particularly demarcation report (Ex.PW4/B), wherein the concerned revenue official found the length of this dividing line on northern side of khasra No. 896//2/3 as 90 karams.

Defendants-appellants did not file any objection to this demarcation report, nor they rebutted this cogent and convincing evidence, by leading any better piece evidence in their favour. Once the defendants had

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an opportunity to raise objection about the correctness and authenticity of this demarcation report but they did not avail the said opportunity and that too, for no good reasons, they were bound to fail. That is what has been held by both the learned courts below, while recording their concurrent findings of facts, which deserve to be upheld.

It is neither pleaded nor argued case on behalf of the defendants-appellants that they produced some other better evidence on record, which might not have been considered and appreciated by the learned courts below. It has also come on record that pursuant to mutation No. 2249, plaintiff moved an application for correction in the revenue record vide Ex.P-9. Acting upon said application moved by the plaintiff, Halqa Patwari carried out demarcation at the site and submitted his report to the Tehsildar vide Ex. P10. When appropriate action was not taken by the concerned authorities, matter was re-agitated before the higher revenue authorities.

Finally, matter went before the Sub Divisional Magistrate and on his directions, Tehsildar carried out demarcation and submitted his report vide Ex.PW-4/B, concluding that length of dividing line on northern side of khasra No. 896//2/3 was 90 karams. This demarcation report has proved to be a clincher against the defendants-appellants and in favour of the plaintiff-respondent, because there was no contrary evidence available on record. Under these circumstances, it can be safely concluded that the 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.

Before arriving at a judicious conclusion, the learned Additional

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District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. He also sought assistance of an expert revenue official, i.e. Sadar Kanungo, with a view to ascertain the actual length of disputed dividing line on the northern side of khasra No. 896//2/3. Cogent findings recorded by the learned first appellate court in para 15 and 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“After incorporation of mutation No. 2249, plaintiff moved an application for correction of the revenue record Ex.P9. Accordingly, Halqa Patwari conducted a demarcation and submitted report Ex.P9. Accordingly, Halqa Patwari conducted a demarcation and submitted report Ex.10 to Tehsildar Hansi but Tehsildar did not bring the actual existing state of affairs in his report. Matter was re-agitated before revenue authorities, i.e. Tehsildar Hansi vide Ex.P11 claiming that northern DOL written as 95 Karam in report ExPW4/B is incorrect, while in fact length of his DOL in total is 90 karam. Accordingly, Tehsildar Hansi submitted report Ex.PW4/B to SDM and it was concluded that northern DOL to the extent to 31 karam was enhanced to the extent of 37 karam.

After coming into existence the dispute between both the parties, one party on some occasion manage the affairs in their favour by political or some allurements given to revenue authorities. This is quite true but bitter fact of our society. However, the revenue record prepared before coming into existence the dispute between both parties keeps more weightage. The revenue record, Tatima mutation and site plan prepared by revenue authorities after 1985, the decree passed on the basis of family settlement among family members of

defendants keeps less weightage. True picture has been shown in previous record pertaining to 50-60 decades. In Ex.P3, Ex.PW2/A, Ex.PW2/B the area of the northern DOL of the property of defendants is only 90 karam. In Ex.P3 the Aks which is quite old before arising of dispute between both the parties, length of the western DOL of the property of defendants is 90 karam while length of northern side DOL of plaintiff is 136 karam.

I took assistance of Sadar Kanungo, Hisar, for ascertaining the actual length of northern DOL of the property of appellants qua khasra No. 896. In Ex.P3 area of upper portion of northern DOL of 90 karam was ascertained as $90 + 83/2(12)$. The total area thus comes to be to the extent of 4 kanal 16 marla which is the correct area as claimed by defendants and this area comes out after considering the northern DOL of property of defendants to be 90 karam and another northern wall 83 karam. Thus, in fact, area of the DOL of the property of killa No. 896 is 90 karam. This is not only proved from Ex.P3 but other documents relies upon by defendants. During course of arguments, learned counsel for the appellants referred demarcation report Ex.PW4/B but this report also reflects the northern side to be of 90 karam. Ex. P6 is decree sheet and Ex.P7 is judgment dated 20.3.85 passed on the basis of family settlement among defendants. However, defendants got succeeded in misinterpreting the revenue record and they got prepared with the help of Patwari, length of northern wall to be 95 karam in place of 90 karam. Later on matter was re-agitated by plaintiff by moving application before Tehsildar Hansi and in report Ex.P10, the total area of the disputed portion adjoining to northern DOL was 2 kanal 16 marlas. In fact, northern DOL 31 of karam has been shown to be of 37 karam, though same is

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31 karam only. Ex.P11 is report of Tehsildar alongwith it number of documents have been attached including field book. From EX.P11 and EX.P12 and their enclosures it is evident that northern wall of the property of defendants is 90 karam. This further certified by Ex.P13. Plaintiff also relied upon the report of Tehsildar dated 17.11.2005 and demarcation report dated 11.12.2005, mutation NO. 2249 and detail of the total area qua same is Istekharaj report whereof it is evident that disputed property is only 90 karam and not 95 karam.

It was one of defendants to prove that area of northern DOL of their property bearing khasra No. 896 is 97 or 95 karam in place of 90 karam. However, their documents substantiate the stand of defendants clarifying the picture in crystal clear manner. In fact, length of northern DOL of khasra No. 896 is 90 karam. Further, stand of plaintiff is clarified by demarcation report dated 12.11.2005. From evidence of both parties, especially the documents relied upon by defendants, case of plaintiff was proved that length of the northern DOL of the property of defendants have been to the effect of 90 karam instead of 97 or 95 karam. As defendants could not prove their claim regarding length of disputed DOL to the extent of 97 or 95 karams, therefore, suit was rightly decreed by learned trial court and it accordingly, restrained defendants from interfering in the adjoining property of plaintiff. Since, defendants could not prove their basic stand, so learned trial court declined the counter claim of defendants. Hence, findings given by learned trial court are confirmed.”

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.

14.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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