

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

RSA No.1421 of 2017 (O&M)

Date of Decision: March 14, 2017

Ajit & Ors.

..Appellant(s)

Versus

Rishal Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.P. Sharma, Advocate
for the appellants.

ANITA CHAUDHRY, J.

This is the defendants' second appeal dis-satisfied with the judgments passed by both the Courts below.

The plaintiffs approached the Court seeking a decree for perpetual injunction and possession of field no.36//13 measuring 14 Marla. It was claimed that plaintiffs no.1 & 2 had half share while the remaining half was owned by plaintiffs no.3 & 4. The defendants owned the adjoining property bearing field no.36//26. It was pleaded that the defendants had raised construction and had encroached over the portion of their land. It was pleaded that proceedings under Section 133 Cr.P.C. had been initiated by their father against defendants no.1 to 3 pertaining to the encroachment. It was pleaded that some of the defendants filed revision which was later on withdrawn in 1998. It was pleaded that defendant no.7 and others had also filed a petition before the Director Consolidation which was dismissed in default.

The defendants took the plea asserting their adverse possession. They also took a contradictory stand that the land of the plaintiff was adjacent to the property bearing field no.36//26 so the plaintiff had decided to take a lesser share and they had been compensated. It was pleaded that the plaintiffs knew that the defendants had raised construction in Khasra no.36//13.

The trial Court gave a finding that the plaintiffs were unable to prove the area encroached and did not file any site plan and since they were asking for possession, the site plan was necessary. It also noted that the defendants had failed to prove their adverse possession and since they had taken the plea of permissive possession, it was a contradiction. The lower Court partly decreed the suit that they were entitled to the decree of injunction.

Aggrieved with the judgment, an appeal was preferred by the plaintiffs. The Appellate Court took the view that there was no necessity for any demarcation or any plan as the area encroached was shown in the proceedings filed under Section 133 Cr.P.C. and it was known to the parties and the defendants had placed on record the site plan Ex.DW3/C. It was held that the defendants could not prove their possession to be hostile or adverse. It was held that if the possession was with consent of the owner then it could not be adverse. The decree was modified and decree for possession was passed.

I have heard the counsel for the appellants and I have perused the two documents Ex.DW3/B and Ex.DW3/C, which refer to the area encroached.

The defendants did not challenge the judgment of the lower Court. The plaintiffs had approached the first Appellate Court seeking modification of the judgment. The defendants in their written statement had referred to the map filed in the proceedings initiated under Section 133 Cr.P.C. There was no dispute regarding the identity of the area encroached nor the defendants were mis-led. It was proved that the defendants had encroached on the plot of the plaintiff and the particulars are available in Ex.DW3/B. I find no infirmity in the judgment passed by the first Appellate Court.

There is no merit in the appeal and is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

March 14, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No