

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2757 of 2017 (O&M)
Date of decision: 23.05.2017

Pritam Singh

... Appellant

Vs.

Bhagirath Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Dinarpur, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant No.1 is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for possession filed by the plaintiff on the basis of his undisputed ownership, was decreed by the learned trial Court, vide its impugned judgment and decree dated 09.01.2012 and first appeal filed the defendants was also dismissed by the learned first appellate Court, vide impugned judgment and decree dated 02.02.2017.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the plaintiff had filed the suit against the defendants alleging inter-alia, that he along with his brothers and sisters, namely, Soma, Chinto, Bohti, Bachni, Somi and Bholi was co-sharers were owners of the suit property i.e. land measuring 7 Marlas, comprised in

khewat/khatauni No.43/63, khasra No.83(0-7), situated within the revenue estate of village Budheri, HB No.324, Tehsil Jagadhri, District Yamuna Nagar, as per jamabandi for the year 1986-87. It had been further pleaded that the defendants without getting the suit land demarcated had constructed some superstructure under the garb of their land and encroached upon some portion of the land in dispute. Thereafter, plaintiff moved an application upon which the land was demarcated by Babu Ram Dhiman, Retired Naib Tehsildar on 20.06.2000 in presence of parties and as per demarcation report, defendant No.1-Pritam Singh was found in illegal and unauthorized possession over the land measuring 2 Marlas out of the total land measuring 7 Marlas, but on the presence sheet, defendant No.1 did not put his signature. It had been further pleaded that after getting the demarcation of the suit property, plaintiff requested the defendants to vacate the same but defendants put off the matter on one pretext or the other and ultimately, refused to accede to the genuine request of the plaintiff, rather, threatened to raise construction over the said land and to change the existing position thereof. Hence, the plaintiff had sought a decree for possession of the suit land i.e. land measuring 2 Marlas, out of land measuring 7 Marlas, by way of removing the super-structure, if any from the suit land, and also for recovery of compensation to the tune of Rs. 100/- per day for wrongful and illegal use of the suit property from the date of institution of the suit till the delivery of possession of the said property. Further relief of permanent injunction restraining the defendants from raising any sort of construction or changing the existing nature of the suit property by way of digging the land or making any addition or alteration had also been prayed for.

Having been put to notice, defendants appeared and filed their

written statement. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether plaintiff is entitled for possession of suit property and for recovery of compensation at the rate of Rs.100/- per day for wrongful and illegal use of suit property till delivery of possession of suit land? OPP
2. If issue No.1 is proved, whether plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether suit of the plaintiff is not maintainable? OPD
4. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD
5. Whether plaintiff has no locus standi to file the present suit? OPD
6. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD
7. Whether plaintiff has concealed true and material facts from this court? OPD
8. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD
9. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved his case. Accordingly, suit for possession filed by the

plaintiff was decreed by the learned trial Court, vide its impugned judgment and decree dated 09.01.2012. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 02.02.2017. Hence this regular second appeal at the hands of defendant No.1. He impleaded the plaintiff as respondent No.1 and the remaining defendants No.2 to 4 as proforma respondents No.2 to 4 in the present appeal.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that plaintiff was absolute owner of a small piece of land measuring 02 marlas. Adjoining land was the ownership of defendant No.1-appellant. It was appellant-defendant No.1, who has encroached upon the land measuring 02 marlas owned by the plaintiff, by raising construction thereon. When this fact came to the notice of the plaintiff and he raised this issue, parties allegedly comprised the matter. However, it is also not in dispute that the writing Ex.D1 was neither a registered document nor it was incorporated in the relevant revenue record. Further, since the property was carrying the value of more than Rs.100/- and was requiring compulsory registration, such an oral exchange would also not be permissible in law. Having said that, this Court feels no hesitation to conclude 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.

Once ownership of plaintiff has gone undisputed and encroachment by defendant No.1-appellant on the piece of land owned by the plaintiff has also been established on record, his suit was bound to be decreed and the same had been rightly decreed by both the learned Courts below. Had the alleged oral

exchange been a genuine transaction between the parties, there would have been no difficulty for the appellant to get the same incorporated in the relevant revenue record, but he did not do so for the reasons best known to him. In the absence of any reflection of alleged oral exchange in the relevant revenue record and also its non-registration, such a transaction would be of no consequence and it will not confer any kind of right or title on the appellant-defendant No.1. That is what has been held by both the learned Courts below. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. The cogent and relevant findings recorded by learned Additional District Judge in para 21 of his impugned judgment, which deserve to be noticed here, read as under: -

“Ex.P3 is the demarcation report which has been conducted by Retired Naib Tehsildar Shri Babu Ram Dhiman in the year 2000 and he has found unauthorized possession of defendant no. 1 over land approximately 2 Marlas of khasra No.83, which has been shown in the site plan attached with the report Ex.P3, according to which defendant No.1 has been found in unauthorized possession of 6 X 3 Karam towards eastern-southern side of total area of 02 Marlas of the land belonging to the plaintiff by raising construction of residential house. The demarcation report had

been signed by respectables of the village including Chowkidar but had been denied to sign by the defendant No.1 despite the fact that he was present as has been deposed by PW1 Chiranji Lal, PW2 Gurdeep Singh and PW3 Rajinder Kumar, special power of attorney of plaintiff. The demarcation report Ex.P3 bears the signatures of many respectable persons of the village, who were present at the spot at the relevant time Meaning thereby, it is established on the file that the defendant No.1 is in unauthorized possession over land measuring 02 Marlas of Khasra No.83, which has been shown in the site plan prepared by the local commissioner, who had prepared the demarcation report Ex.P3 and thus, the findings recorded by the learned lower court in this regard are well reasoned and justified. Therefore, the findings recorded by the learned lower court hereby decreeing the suit of the plaintiff against defendant no. 1 while dismissing the same qua defendants No.2 to 4 with costs and consequently passing a decree for possession of the suit property in favour of the plaintiff against defendant No.1, detailed in head note of the plaint, and shown in demarcation report Ex.P3 accompanied by site plan in which unauthorized possession of defendant No.1 has been shown and further directing the defendant No.1 to hand over the vacant possession of the suit property after removing super-structure therefrom at his own expenses, within the stipulated period of two months, failing which defendant No.1 has to pay use and occupation charges at the rate of Rs.20,000/- per year from

passing the decree till handing over the actual possession thereof are well reasoned and justified. Therefore, it can be said that the findings of the learned lower court recorded on all the issues are well reasoned and justified and do not suffer from any infirmity or illegality and the same are upheld.”

Further, a combined reading of both the impugned judgments and decrees passed by the learned Courts below would make it crystal clear that there was sufficient evidence in favour of the plaintiff, so as to pass a decree of possession in his favour. Possession of the appellant was found unauthorized on the land measuring 02 marlas owned by the plaintiff. The demarcation report Ex.P3 has been duly proved on record. It was also bearing the signatures of many respectables of the village who were found present at the spot at the time of demarcation. Thus, the plaintiff has duly proved his pleaded case, by leading cogent and convincing evidence. Since the entire case of the appellant-defendant No.1 was based on the alleged oral exchange, which he miserably failed to prove, in accordance with law, he was bound to fail. That is what has been rightly held by the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the findings recorded by both the learned Courts below. Further, no question of law, much less substantial question of law arises for consideration of this Court, which is sine qua non for entertaining the regular second appeal, while exercising the 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 Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.

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 regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground 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

23.05.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No