

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2988 of 2017 (O&M)
Date of decision: 26.07.2017

Sucha Singh @ Sucha Ram and another

... Appellants

Vs.

Raksha Bawa

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Salar, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment of reversal passed by the learned first appellate Court, whereby first appeal of the plaintiff was allowed, decreeing her suit for permanent and mandatory injunction, defendants have approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of the impugned judgment, are that plaintiff had filed a suit seeking a decree for permanent injunction restraining the defendants from interfering into her peaceful possession and ownership over the land, as detailed in the head note of the plaint, in any manner whatsoever. The plaintiff had further sought a decree for mandatory injunction directing the defendants to remove the construction/encroachment over the suit property made by defendants during the pendency of the suit in spite of the status quo order dated

28.07.2008. The plaintiff had pleaded that she was owner in possession of the land measuring 10 Biswas comprising in Khasra No.759/622/590, which had been purchased by her vide registered sale deed dated 28.07.1980. Out of the said land measuring 10 Biswas, the land measuring 3 Biswas had been acquired by the Electricity Board for installation of electric pole. Further, 2 Biswas of land out of this 10 Biswas had been sold by the plaintiff to one Smt. Bimla. The land measuring 3 Biswas had also been sold by her to Smt. Purni Devi during the pendency of the suit. Hence, in this manner, the plaintiff had remained owner in possession of 2 Biswas of land in the said property, which had been shown in the Jamabandi for the years 2001-2002. The plaintiff had further pleaded that defendants were quite strangers to the said property measuring 2 Biswas, but they tried to encroach upon the property of the plaintiff. However, the defendants had threatened to raise construction over the property of the plaintiff. Not only this, the defendants had also raised the construction during the pendency of the civil suit despite of passing of interim order of status quo in the civil suit directing the parties to maintain status quo regarding the construction. The plaintiff had made several requests to the defendants not to interfere into her peaceful possession over the said land and also to remove the construction, which had been raised during the pendency of the civil suit. However, the defendants did not pay any heed to such requests of the plaintiff. Hence, the suit was filed, which was amended due to raising of construction over the suit land by the defendants during the pendency of the suit.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the

following issues: -

1. Whether the plaintiff is in possession of the suit property?
OPP.
2. Whether the defendants are liable to be restrained from interfering in the peaceful possession of the plaintiff over the same? OPP.
3. Whether the defendants are liable to remove the construction/encroachment made by them over the suit property during the pendency of the suit? OPP.
4. Whether the suit is not maintainable in the present form?
OPD.
5. Whether plaintiff has no locus-standi and or cause of action to file the present suit? OPD.
6. Whether the suit is false and frivolous and liable to be dismissed with special costs? OPD.
7. Whether the plaintiff has concealed the true and material facts from this Court, if so to its effect? OPD.
8. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought 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 failed to prove her case. Accordingly, suit was dismissed, vide judgment and decree dated 19.02.2014. Plaintiff filed her first appeal, which came to be allowed by learned first appellate Court, vide its impugned judgment and decree

dated 27.02.2017. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

Dispute in the case in hand is about the land measuring 02 biswas comprising in khasra No.915/759/622/590/1. Case set up by the plaintiff was that she was owner in possession of the land measuring 10 biswas, which was purchased by her vide registered sale deed dated 28.07.1980. Out of said land measuring 10 biswas owned by the plaintiff, land measuring 03 biswas was acquired by the Electricity Board and land measuring 02 biswas was sold to one Smt. Bimla. Thereafter, the plaintiff sold land measuring 03 biswas to Smt. Purni Devi.

Thus, the plaintiff-respondent remained owner in possession of land measuring 02 biswas, as per jamabandi for the year 2001-02. Defendants-appellants being strong persons, encroached upon the area of the plaintiff. It was so established on record vide report of Local Commissioner dated 07.07.2005 Ex.PA. Having said that, this Court feels no hesitation to conclude that the learned first appellate Court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

Defendants-appellants denied the ownership of the plaintiff over the abovesaid land measuring 10 biswas for want of knowledge. They further alleged that the land was jointly owned by all the co-sharers. Although the defendants-appellants claimed to have purchased the land measuring 03 biswas 05 biswansi vide sale deed dated 21.01.2004, yet their own witness DW2 Hem Chand, during his cross-examination, admitted that defendants have not been recorded as co-sharers in the available revenue record. In this view of the matter, this Court is of the considered opinion that the defendants had no

concern whatsoever with the suit land, on which the plaintiff was in possession as owner.

Further, report of the Local Commissioner dated 07.07.2005 Ex.PA has proved to be a clincher against the defendants-appellants and in favour of the plaintiff-respondent. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate Court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

In case the defendants-appellants were claiming themselves to be co-sharers, which they miserably failed to prove, still they were supposed to seek partition of the suit property. They had no right to disturb the old and settled possession of true owner-plaintiff by using force. It was duly established on record that the defendants-appellants encroached upon the land owned by the plaintiff, without any kind of right in their favour.

In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court as well as this Court in the following judgments: -

1. ***Rame Gowda (D) by LRs Vs. Mr. Varadappa Naidu (D) by LRs and anr., 2004 (1) SCC 769.***
2. ***Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through LRs and others, 2012 (5) SCC 370.***
3. ***Achhar Chand Vs. Hari Kishan (deceased) through LR and others, 2015 (41) RCR (Civil) 788.***

Before arriving at his judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the

case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 25 to 27 of the impugned judgment, which deserve to be noticed here, read as under: -

*“From the perusal of report of Local Commissioner, there is no manner of doubt that both the defendants were found in illegal possession over the land measuring 2 Biswas comprising in Khasra No. 915/759/622/590/1. Right from the very beginning, it is the case of the plaintiff that defendants have no concern with Khasra numbers discussed above and therefore possession of defendants over these Khasra numbers amounts to encroachment. Recently, our own High Court in **Achhar Chand Vs. Hari Kailash Nand 2016 (1) CCC 216** has held that **where there is encroachment and for the determination of this fact, the report of Revenue Official is always relevant when demarcation of the property is required.***

In this manner, report dated 7.7.2005 of the Local Commissioner is relevant piece of evidence to determine the facts of encroachment made by the defendants. In the wake of detailed report of the Local Commissioner appointed by this Court, the earlier report dated 13.11.2008 Ex.P5 stands disbelieved by this Court. The subsequent report of Local Commissioner has highlighted the prevalent position over the property to show that suit property of the plaintiff has been encroached by the defendants.

Now, I fail to understand that when none of the defendants has claimed any right over the Khasra numbers 915/759/622/590, then lower court was supposed to give a finding in favour of plaintiff that possession of the defendants over these Khasra numbers is illegal. Interestingly, the lower court has observed in para No. 26 of the impugned judgment that report of Local Commissioner vide Ex.P5 did not make it clear that at which point of time the shop was constructed, is itself incorrect because it was not the duty of the Local Commissioner to ascertain the age of the construction of the shops in the suit property, rather it was duty of the Local Commissioner to find out the encroachment of any part of the suit property. That apart, the judgment of learned District Judge, Ambala in LAC No.35 of 1995 Ex.PX and further RFA bearing No.294 of 1997 Ex.PY are such relevant piece of evidence which have also vindicated the stand of the plaintiff Raksha Bawa that her other land out of this land was acquired by the State of Haryana. In this manner, on the basis of oral evidence coupled with documentary evidence, it is proved on record that the defendants have encroached the land of the plaintiff to the extent as reflected in the report of Local Commissioner dated 7.7.2005 vide Ex.PA (Marked by this Court). In this manner, the findings of lower court on all the issues are not sustainable in the eyes of law and are liable to be reversed and set aside.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgment

passed by the learned first appellate Court. Further, learned counsel for the appellants could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the 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 **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

26.07.2017
vishnu

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