

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

R.S.A.No.1337 of 2001 (O&M)

Date of Decision: August 02, 2018

Zile Singh

...Appellant

Versus

Surat Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr. Harkesh Manuja, Advocate,
for the appellant.**

None for the respondent.

AMIT RAWAL, J.

Appellant-defendant is in Regular Second Appeal against the judgment and decree dated 22.11.2000 of the Lower Appellate Court, whereby the suit for possession in respect of the suit property preferred by the plaintiff-respondent dismissed by the trial Court, has been decreed. In essence, the judgment and decree of the trial Court was reversed.

Respondent-plaintiff instituted the suit claiming possession of plot bearing No.416, Khata No.701, Killa No.16/69/1/8 measuring 0K-4M situated in the area of Village Janti Kalan, Tehsil and District Sonapat. It was alleged that Panchayat of Village Janti Kalan had gifted the aforementioned plot to the plaintiff under 20 point programme strictly for residential purpose and mutation bearing No.1763 dated 13.06.1980 in this regard was sanctioned in favour of the plaintiff. About a year and half back, defendant took illegal possession of the plot and constructed kotha after

raising the boundaries and during this process, also made encroachment on the southern side of the plot belonging to the plaintiff as shown by letters DEFG in the site plan. Plaintiff before filing of the suit got the demarcation conducted and found that there was encroachment as noticed above and, therefore, instituted the suit.

Defendant contested the suit and filed written statement raising numerous preliminary objections qua concealment, locus-standi, estoppel etc. On merits, the alleged encroachment was emphatically denied. The factum of the property having been gifted by the Gram Panchayat was also denied. Defendant had also taken the plea of adverse possession claiming right, title and interest in the aforementioned suit property.

Since the parties were at variance, the trial Court framed the following issues:-

- 1) Whether the plaintiff is owner of suit plot as described in para No.1 of the plaint as alleged? OPP
- 2) Whether the defendant has made illegal encroachment of the southern portion marked by letters 'DEFG' of the suit plot about 1½ years ago as alleged? OPP
- 3) Whether the suit of the plaintiff is not maintainable in the present form? OPP
- 4) Whether the plaintiff has concealed material facts from the Court? OPD
- 5) Whether the plaintiff has no locus standi to file this suit? OPD
- 6) Whether the plaintiff is estopped from filing the suit by his act and conduct? OPD
- 7) Whether the suit has been properly valued for the purpose of court fees and jurisdiction? OPD
- 8) Whether the plaintiff has no cause of action to file this suit? OPD
- 9) Whether the plaintiff has dragged the defendant into

unnecessary litigation and he is entitled to special costs under Section 35-A of CPC? OPD

10) Relief.”

In support of his case, plaintiff examined as many as three witnesses, i.e., PW-1 Wazir Singh, PW-2 Paras Ram and himself as PW-3 and also produced on record Ex.P1 site plan, Ex.P2 gift deed, Ex.P3 demarcation report, Ex.P4 copy of mutation, Ex.P5 copy of jamabandi for the year 1983-84 and Ex.P6 copy of jamabandi for the year 1993-94. On the other hand, defendant examined himself as DW-1.

The trial Court, on the basis of the aforementioned evidence both oral and documentary and by taking into consideration the provisions of Section 123 of the Transfer of Property Act (for short, the Act) dismissed the suit. Plaintiff challenged the judgment and decree of the trial Court, as noticed above, by filing appeal, which was allowed and the suit was decreed.

Mr. Harkesh Manuja, learned counsel appearing on behalf of the appellant-defendant submitted that the plea of adverse possession was a passing reference, whereas the fact remains that the defendant did not encroach upon the suit land. Plaintiff miserably failed to prove the alleged encroachment as the demarcation report dated 08.11.1997 was at the back of the appellant, for, the suit was filed on 04.12.1997. Lower Appellate Court did not examine the fact that the plaintiff miserably failed to prove the gift deed as well as the provisions of Section 123 of the Act. The gift deed dated 05.01.1977 was not attested by two witnesses being mandatory requirement of law. The trial Court, though dismissed the suit, but did not adjudicate upon the objections to the report of the Local Commissioner. The Lower Appellate Court found that the area allegedly encroached shown with letters

DFEG in the site plan Ex.P1. The gift deed is only for 3 (three)marlas of land, whereas plaintiff claimed the area of the disputed plot as 4 (four) marlas and, thus, prayed for reversing the findings.

There is no representation on behalf of the respondent-plaintiff.

Appeal is of 2001. The same stands admitted vide order dated 27.08.2004 and the interim order dated 13.07.2001 directing the parties to maintain status-quo was ordered to continue.

I have heard the learned counsel for the appellant, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Manuja. The reason is not one but many:-

- 1) It is settled law that where the defendant takes a plea of adverse possession, it amounts to admitting the title of the plaintiff, therefore, the argument that plaintiff miserably failed to prove the ownership in not proving the gift deed is devoid of merit and hereby rejected;
- 2) It was incumbent upon the appellant-defendant to take the assistance of the revenue official for demarcation of the alleged property in question to belie the case of the plaintiff vis-a-vis encroachment, thus, miserably failed to discharge the onus;
- 3) Appellant-defendant has not been able to prove on record any document to show ownership of the disputed property vis-a-vis documentary evidence, as noticed above, of the plaintiff;
- 4) In the absence of any demarcation report at the behest of the defendant, the demarcation report of the plaintiff has gone

un-rebutted. This is what the import of the judgment of the Lower Appellate Court;

5) No counter claim has been set up to challenge the gift deed and, therefore, the defendant cannot be permitted to raise such pleas in absence thereof.

As an upshot of aforementioned findings, I do not find any illegality or perversity in the judgment and decree of the Lower Appellate Court being the last Court of fact and law nor involvement of any substantial question of law. The appeal is devoid of merit. Resultantly, the same is dismissed.

August 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No