

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

RSA No.4404 of 2009 (O&M)

Date of decision:01.05.2018

Jagdish

... Appellant

Vs.

Molar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Dr. Parveen Hans, Advocate
for the appellant

Mr. Shailendra Mohan, Advocate
for the respondent.

AMIT RAWAL J.

Appellant-plaintiff is in Regular Second Appeal against the partial decreetal of the suit seeking permanent and mandatory injunction restraining the defendant from alienating and demolishing the suit property shown in the site plan in letters ABCDEF.

Succinctly, the facts as emanates from the pleadings of the parties are that appellant-plaintiff instituted a suit against the defendant-respondent on the premise that vide documents Ex.P1 and Ex.P2 of 1971, purchased the area measuring 1469 square feet from the Custodian Department and rapat roznamcha dated 26.08.1971 was also recorded. It was consisting in two parts. Defendant was given area shown in site plan marked by letters FGDE, i.e. consisting of veranda, a room and a store with

an intention that he would hand over the vacant and physical possession as and when demanded. When defendant refused to accede the request of plaintiff and was adamant to alienate the suit property, cause of action arose to file the aforementioned suit.

Defendant contested the suit by raising all preliminary objections and stated that it was ancestral property but factum of ownership of the plaintiff to the extent of 1469 square feet was not disputed, rather it was explained that property consisted 3 portions instead of two, out of which sons of plaintiff were in possession of two portions while third was in possession of defendant as owner. The ownership of the plaintiff was also emphatically denied. It was also stated that matter was settled between the parties in Biradari Panchayat held on 16.10.2005, whereby, the plaintiff had assured to get executed the sale deed for half portion in the name of defendant on or before 18.10.2005.

Since the parties were at variance, the trial Court framed as many as 9 issues including the issue of Relief. Plaintiff brought on record Ex.P1 to Ex.P4 besides examining himself as PW1 and PW-2, Mani Ram. On the other hand, defendant examined as many as four witnesses and brought on record various documentary evidence.

The trial Court on the basis of evidence brought on record partly decreed the suit by restraining the defendant from alienating the area measuring 87 square feet. The appeal laid before the Lower Appellate Court also met with the same fate.

Dr. Parveen Hans, learned counsel appearing on behalf of the appellant submitted that the Courts below have not only abdicated but committed illegality and perversity in not granting injunction vis-a-vis demolition nor relief of possession was granted. Concededly, the defendant was found to be in possession of 87 square feet area out 1469 square feet, for, ownership of the plaintiff had been proved through Ex.P1 and Ex.P2. There was misreading of site plan. Defendant failed to bring on record any evidence enabling the Court to form an opinion that total area of land was 6133 square feet. The site plan brought on record had been proved. Both the Courts below erred while making calculations with regard to area of land in dispute owned and possessed by the appellant-plaintiff and respondent-defendant. No evidence had come on record enabling the Court to form the opinion that total area of land in dispute was 6133 square feet and thus, urged this Court for setting aside the findings under challenge.

Per contra, Mr. Shailendra Mohan, learned counsel for the respondent-defendant submitted that total area of suit property was 6133 square feet. The land belonging to the father was adjacent to the plot purchased by the plaintiff, i.e., 1469 square feet, though the documents were only tendered into evidence as Ex.P1 and Ex.P2. Mere exhibition of the document would not dispense with its proof, for, no witness from the Custodian Department was examined. Be that as it may, he submitted that the findings rendered by both the Courts below are perfectly legal and justified, much less do not call for any interference.

I have heard the learned counsel for the parties, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Dr. Parveen Hans, for, the Court below on the basis of site plan Ex.PW4/D and field book Ex.PW4/C found that total area was 6133 square feet, whereas, plaintiff had purchased the land measuring 1469 square feet. Plaintiff in cross-examination conceded that adjacent to the land in dispute, his father had purchased some land which was inherited by him and his brother. As per the admission, defendant had been found in possession of area shown in green colour and as per site plan Ex.P4, he and his sons are in possession of area shown in red colour. The green colour was depicted by letter EFDG.

From the calculation arrived at, possession of defendant came to be 2332 square feet out of 4664 square feet by subtracting 1469 square feet from 6133 square feet, therefore, he was found in excess area of 87 square feet for which injunction qua alienation had been sought. It has not come on record as to whether the construction was raised by the appellant-plaintiff or defendant-respondent nor relief of possession had been sought, therefore, prayer in the present appeal for restraining the defendant-respondent from demolition or handing over the possession was beyond the pleadings and rightly so, has been discarded.

I do not find any illegality and perversity in the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 01, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No