

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

RSA No.11 of 2011 (O&M)
Date of decision : 03.04.2018

Om Parkash and another

...Appellants

Versus

Partap Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kul Bhushan Sharma, Advocate for the appellants.

Mr. Rakesh Kumar Sharma, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court.

The plaintiff filed a suit for mandatory and permanent injunction directing the defendants to dismantle the wall and restore the physical possession of the land detailed in the plaint. The plaintiff also prayed that the defendants be restrained from alienating the property in any manner.

The plaintiff claimed that he is absolute owner in possession of the property and the defendants had forcefully and illegally encroached upon some portion of the land and constructed the wall.

In the written statement, defendants pleaded that the property

was allotted to them by the Gram Panchayat as they belonged to the Harijan Community. The defendants pleaded that they had been allotted plots in Rectangle No.88, Killa Nos.14/3, 16/2 and 17/1.

Learned trial Court had dismissed the suit, however, the learned First Appellate Court had reversed the finding of the learned trial Court after re-appreciation of the evidence.

Learned First Appellate Court has noticed that the plaintiff had got the land demarcated before filing the suit through retired Naib Tehsildar. It was reported as per the demarcation report that the land is situated within the Lal Dora (*abadi*) and the defendants had encroached upon the same. The First Appellate Court has also noticed that defendant No.3 appeared in the witness-box and admitted that they have encroached upon the area of the plaintiff. With these findings, the learned First Appellate Court has reversed the judgment of the trial Court.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellants has vehemently argued that the defendants-appellants have been allotted plots. He has submitted that the allotment of the plots is not in dispute. Hence, he submits that the judgment of the First Appellate Court is erroneous.

In the considered opinion of this Court, there is no substance in the argument of the learned counsel for the appellants. Before filing the suit, the plaintiff had got the property demarcated from a retired revenue official who had reported that there is an encroachment by the defendants. Still

further, defendant No.3 when appeared in the evidence has admitted that the defendants have encroached upon the land belonging to the plaintiff. The Court has further found that the property of the plaintiff is separate than what was allotted to the defendants.

In view of the aforesaid, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

03.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No