

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1328 of 2013 (O&M)

Date of Decision: February 14, 2018

Raja Ram & others

...Appellants

Versus

Yogesh Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Gaurav Mohunta, Advocate,
for the appellants.

Mr.Amit Jain, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact and law, whereby the suit filed by Sube Singh plaintiff (since deceased) through legal heirs, seeking possession of 3 marlas of land and consequential relief of permanent injunction, had been decreed only to the extent of possession, which, in appeal taken by the appellant-defendants, has been upheld.

Plaintiff Sube Singh instituted the aforementioned suit on the premise that he along with the proforma defendants were owners in possession of the land measuring 2 kanals 8 marlas comprising of Khasra No.146 to the extent of 1/4th share and their father Sultan Singh to the extent of 1/6th share. Lal Singh son of Suraji daughter of Kesho and Mewa daughter of Janki daughter of Kesho relinquished their 1/16th share each in favour of the plaintiff and proforma defendants vide release deed dated

15.6.2005. As per the mutual settlement, proforma defendants had given their share in Khasra No.146 to the plaintiff and, thus, became exclusive owner in possession of 1/4th share of land measuring 2 kanals 8 marlas after raising the construction of the house.

On 14.3.1998, the plaintiff got the plot demarcated in the presence of the defendants and raised the construction towards the eastern part while western part was left vacant for tethering cattle. However, in the month of June, 2005, when he was away to Jaipur, the defendants raised the construction on the portion shown with mark 'CED' in the site plan. Again a demarcation was done on 14.8.2005, where it was found that the defendants are in illegal possession/had encroached 3 marlas of land, which necessitated him to file the suit.

The appellant-defendants contested the suit by taking customary pleas of maintainability, limitation, concealment, but on merits denied the ownership of the plaintiff, much less illegal construction as averred in the plaint. It was stated that the construction existed since 1996-97, which was raised in the presence of the plaintiff and, therefore, they are owners in possession since long and had become owners in possession by way of adverse possession. Since the parties were at variance, the trial Court framed the issues. Both the parties led evidence and on the basis of the evidence, the trial Court decreed the suit.

Mr.Gaurav Mohunta, learned counsel representing the appellant-defendants submits that both the Courts below, particularly the Lower Appellate Court, being the last Court of fact and law, abdicated in not reading the evidence in correct perspective. In essence, there is misdirection which itself is a substantial question of law and the matter

requires to be re-visited. He has also drawn the attention of this Court to the true translation version of demarcation report (Ex.P-2) conducted on 14.8.2005 in the presence of both the parties, whereby the Local Commissioner had presumed the area to be 32 karams instead of 30 karams and found the illegal possession of 3 marlas of land, whereas the Lower Appellate Court in Paragraph 15 of the judgment observed that the Local Commissioner had presumed the area as 30 karam. If at all, it be taken as 32 karams, the illegal encroachment would have been more. The plaintiff has failed to discharge the onus as he has to stand on his own legs and, therefore, the suit is liable to be dismissed, even if the objections to the demarcation report were not filed.

Plea of adverse possession was additional relief and, therefore, that cannot be read against the appellant-defendants. At the best, the matter requires to be remanded to the Lower Appellate Court for fresh adjudication.

Per contra, Mr.Amit Jain, learned counsel for the respondents submits that concurrent findings cannot be interfered with as both the demarcations of 1998 and 2005, *ibid*, were done in the presence of the parties and the construction had been raised. It was brought to the notice of the plaintiff that there was no encroachment, but when he had gone to Jaipur, the defendants taking the advantage of the absence, raised the construction by encroaching 3 marlas of land. The plea of adverse possession tantamounts to admission of the ownership and, therefore, the declaration of ownership was not sought for. The report of the Local Commissioner was not objected to as it was conducted in the presence of the parties and, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Mohunta.

Taking up the plea of adverse possession, leads to following conclusion:-

“Admission of the ownership and possession of the land belonging to the opposite party, i.e., plaintiff herein.”

Had the appellant-defendants not taken the plea of adverse possession, perhaps there was some force in the argument of Mr.Mohunta for pondering over the matter with regard to the finding of the Lower Appellate Court vis-a-vis the report of the Revenue Officer, who conducted the demarcation. Mr.Mohunta, during the course of the hearing, has also drawn the attention of Court to Annexure A-3, the site plan, prepared by the Kanungo to show that there were more encroachments vis-a-vis the other parties for which the respondents remained silent, therefore, the discretionary attitude cannot be permitted. I am of the view that it is the discretion of the respondents to seek redressal of grievances, but not to the whims and fancies of the appellant-defendants, particularly when the encroachment was attributed to them only.

Demarcation report was done in the presence of the parties, which was not objected to. The field book had been referred to by both the Courts below. The area was also demarcated in accordance with High Court Rules and Orders, i.e., by keeping the permanent points and also triangular shape. All the parameters were followed.

In my view, the findings of the Lower Appellate Court are perfectly legal and justified and do not call for any interference or can be

said to be suffering from any perversity. No ground for interference is made out, much less substantial question of law. Resultantly, the appeal is dismissed.

February 14, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No