

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3021-2013 (O&M)

Date of decision: 02.05.2018

Amarjit Singh and others

..... Appellants

Versus

Haryana Urban Development Authority, Panchkula

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Amit Jhanji, Advocate for the appellants.

Mr. Sudeep Mahajan, Advocate for the respondent.

RAMENDRA JAIN, J. (ORAL)

1. Through this Regular Second Appeal, the plaintiff-appellants have laid challenge to the judgment and decree dated 02.07.2013 of the Ist Appellant Court, setting aside the judgment and decree of the trial Court dated 10.02.2010, whereby suit of the plaintiff-appellants was decreed.

2. Put, pithily, defendant/respondent-HUDA, issued four notices Ex. P-14 to Ex. P-17 to the plaintiff-appellants asking them to show-cause as to why they should not be evicted from the encroached area over the land owned and acquired by it.

3. The appellants challenged those notices by way of a suit for declaration that the same were illegally and wrongly issued to them as they had not encroached upon any area of respondent-HUDA. The trial Court after holding trial, decreed the suit of the appellants in toto vide judgment and decree dated 10.12.2010.

4. Being aggrieved, respondent-HUDA, approached the Ist Appellate Court, challenging the judgment and decree aforesaid of the trial Court, by way of its appeal and got success as the same was set aside. Resultantly, the suit of plaintiff-appellants was dismissed.

5. Now, being dissatisfied, the plaintiff-appellants have approached this Court by of instant Regular Second Appeal.

6. Learned counsel for the plaintiff-appellants contends that both the Courts below have ignored the demarcation report Ex. P-2 of the appellants given by Revenue Officer, in discharge of his official duty, after due notice of demarcation of the land to respondent-HUDA. The Ist Appellate Court, has wrongly and illegally set aside the well reasoned judgment and decree of the trial Court, whereby their suit was decreed in toto. DW-1 Sunder Lal, Patwari, own witness of the respondent had categorically stated that encroached land under the possession of appellants was outside the acquired land of HUDA. In view of his admission, the Ist Appellate Court ought to have dismissed the appeal.

7. On the other hand, learned counsel for respondent-HUDA vehemently opposing the above submissions of learned counsel for the plaintiff-appellant contends that both the Courts below have rightly ignored the demarcation report Ex. P-2, in view of the fact that the same is not in accordance with relevant High Court Rules and Order and standing orders of the Financial Commissioner and further that the same was procured in the absence of respondents. According to demarcation report Ex.D-2, got done by the official of respondent-HUDA in the presence of appellants, they were found to have been in encroachment of 194 Sq. Yards of land owned by the respondent-Department. Therefore, notices Ex. P-14 to Ex. P-17 were

genuinely issued and were wrongly declared illegal by the trial Court.

8. Having given considerable thought to the rival submissions made by learned counsel for both the sides, I find no merit in the instant appeal for the reasons to follow:

9. The appellants in their suit for declaration against respondent-HUDA took categorical stand that they have not encroached upon any land owned by respondent-Department. Rather they were in possession of the land situated within the *Abadi Deh* of village. In support of their contention, the appellants produced demarcation report Ex. P-2, but the same has rightly not been considered by both the Courts below, because of having been obtained in the absence of the officials of respondent-HUDA and also without fulfilling the condition laid down in the standing orders of the Financial Commissioner qua demarcation of land duly admitted by PW-5 own witness of the appellants.

10. According to demarcation report Ex. D-2, got done by respondent-HUDA in the presence of appellants, they were found to have been encroached upon an area measuring 194 Sq. Yards. There is no evidence contrary to the said demarcation report from the side of appellants. Therefore, the same has rightly been believed and relied upon by the Ist Appellate Court. Even otherwise, learned counsel for the appellants has not been able to controvert the said report by pointing out any infirmity in the same, therefore, the same is held as a genuine demarcation report. Mere admission of any official of respondent-HUDA as DW-1 is meaning less in the absence of documentary evidence. Even otherwise, insignificant admission not corroborated by any supporting evidence has to be ignored. Therefore, no benefit of the false admission of

official of the respondent-HUDA can be given to the appellants.

11. I have gone through the judgments of both the Courts below and am of the considered opinion that the findings of the Ist Appellate Court are well reasoned based on correct appreciation of evidence. No question of law much less substantial has been raised in this appeal.

12. In view of the discussion made above, the instant Regular Second Appeal, stands dismissed.

May 02, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No