

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

**RSA No.1319 of 2016 (O&M)
Date of decision:09.03.2018**

Jaswant Singh and another

... Appellants

Vs.

Punjab Agricultural University, Ludhiana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rakesh Kumar, Advocate
for the appellants.

AMIT RAWAL J.

The appellant-defendants are in Regular Second Appeal against the judgment and decree dated 17.07.2014, whereby, the Civil Judge (Senior Division), Kapurthala decreed the suit preferred by the plaintiff/respondent No.1 for possession of 16 marlas of land as described in the plaint; with a consequential relief of permanent injunction and judgment and decree dated 02.11.2015 vide which the appeal preferred by the appellant-defendants against the aforementioned judgment and decree of the trial Court, had been dismissed.

Respondent No.1/plaintiff - Punjab Agricultural University instituted a suit for possession of 16 marlas of land as mentioned in the head note of the plaint with a consequential relief of permanent injunction on the premise that plaintiff was owner in possession of land measuring 31 kanals 17 marlas comprised in khewat no.1782, khatauni no.2642 bearing khasra no.682/31-17 situated in the revenue estate of Kapurthala Sharki, as per jamabandi for the year 2000-01. Mohinder Kaur-defendant no.4 was the

owner of khasra no.683 in the revenue estate of Kapurthala which was situated near Khara no.682, whereas, defendants No.1 to 3 being sons of defendant no.4 started raising construction in the absence of plaintiff, much less without its permission on the area of 3 marlas, East:52 ft., West:52 ft, South 11 ft., North 11 ft., out of khasra no.682/17 comprised in Khewat no.1782, Khatauni no.2642 bearing Khasra no.682/31-17, situated in the revenue estate of Kapurthala Sharki and under the garb of construction also occupied 13 marlas of land out of 31 kanals 17 marlas, therefore, possession of the defendants on the aforementioned land was illegal, unlawful and of the trespasser.

The aforementioned factum of encroachment was reiterated through the report dated 13.12.2000 of Gian Chand, Kanungo. The possession was taken in the year 2000 but the construction started only a week back in the year 2001 necessitating the plaintiff to institute the suit.

The defendants appeared and filed joint written statement by taking the preliminary objections stating therein that suit was required to be filed under Section 6 of the Specific Relief Act, 1963 (in short "1963 Act"). The construction of their houses started 35-40 years back, therefore, suit was barred by law of limitation. It was pleaded that defendant no.4 Mohinder Kaur was owner of khasra no.683 and defendants never raised any construction in the absence of the plaintiff nor they were aware of the demarcation report conducted by Gian Chand, Kanungo.

On the basis of the pleadings of the parties, trial Court framed the following issues:-

"1. Whether the plaintiff is entitled to possession, as prayed

for? OPP

2. *Whether the plaintiff is entitled to permanent injunction,*

as prayed for? OPP

3. *Whether the suit is within limitation? OPP*

4. *Relief.”*

The plaintiff examined Lachhman Dass, Record Clerk, D.C.Office, Kapurthala as PW1, Gian Chand Kanungo as PW2, Veer Singh Chauhan, Inspector Agriculture, PAU Campus, Kapurthala as PW3.

On the other hand, defendant no.3 - Avtar Singh himself appeared as DW1, defendant no.4-Mohinder Kaur as DW2 and DW3-Sakshi, UDC, PSPCL, Kapurthala.

On the basis of the aforementioned evidence, the trial Court decreed the suit by holding that the demarcation report stood proved on record, for, the defendants were not having ownership of the property. The appeal laid before the Lower Appellate Court was dismissed.

Mr.Rakesh Kumar, learned counsel appearing on behalf of the appellant-defendants submitted that judgments and decrees of the Courts below are not sustainable in the eyes of law and fact, for, the land was '*gair mumkin*' and the appellant-defendants raised the construction 35-40 years back. The demarcation allegedly conducted and report was made at the back of the appellants, in essence, they were not associated, thus, it could not be looked into evidence. The suit was not maintainable as the nature of the suit was under Section 6 of 1963 Act, though there was a specific pleading that encroachment was done in the year 2000 but the suit was filed in the year 2007. The evidence led on behalf of plaintiff was not trustworthy and

conclusive and thus, urged this Court for setting aside the judgments and decrees under challenge by formulating the substantial questions of law as drawn in paragraph 9 of the memorandum of appeal.

I have heard the learned counsel for the appellant-defendants and appraised the impugned judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Rakesh Kumar, for, it has not been proved on record that construction raised on the land belonged to appellant-defendants. The demarcation report proved on the case file as Ex.P4 and map as Ex.P5 which *ex facie* proved the alleged encroachment showing that plaintiff was owner in khasra no.682 comprising of 31 kanals 17 marlas which was reflected from jamabandi Ex.P6 and *khasra girdawari* Ex.P7. Ex.P8 was the FIR got registered against the accused though he was acquitted but fact of the matter is that encroachment proved to the hilt. Though the appellant-defendants tried to prove their lawful possession by placing on record electricity connection Ex.D1, ration card Ex.D2, voter ID card Ex.D3, judgment in criminal case Ex.D4, and claimed the adverse possession but fact of the matter is that once plea of adverse possession had been taken, it tantamounts to admitting the ownership of adverse party, i.e., respondent no.1-plaintiff. The defendants in cross-examination did not deny the demarcation conducted by Gian Chand Kanungo and report made thereupon. All these factors weighed in the mind of the Courts below, whereby, the plaintiff was held entitled to possession of 16 marlas of land detailed and described at points (i)(ii)(iii) and iv) of the head note of the plaint.

The arguments of Mr. Rakesh Kumar, Advocate has not been able to make out a case warranting interference. The appeal is wholly devoid of merit as it does not involve any adjudication of substantial questions of law or judgments cannot be said to be result of perversity.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of both the Courts below which are based upon the appreciation of oral and documentary evidence.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 09, 2018
savita

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