

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

**R.S.A No.2565 of 2016(O&M)
Date of decision :03.08.2018**

Satnam Singh

..... Appellant

Versus

Satnam Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. J.S.Dadwal, Advocate
for the applicant-appellant.

LISA GILL,J

CM-6816-C of 2018.

Heard.

Keeping in view the averments in the application duly supported by an affidavit as well as arguments addressed, delay of 13 days in filing of this appeal is condoned.

Application is disposed of.

RSA No. 2565 of 2016.

Present appeal has been filed against the judgment and decree dated 28.09.2012 passed by the learned Civil Judge (Jr. Division), Hoshiarpur, whereby the suit filed by the plaintiff-respondents has been decreed as well as judgment and decree dated 24.12.2015, passed by the

learned Additional District Judge, Hoshiarpur, whereby his appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that respondent no.1-Satnam Singh son of Dharam Singh (plaintiff), filed a suit for possession of the site/property detailed in the plaint and site plan attached alongwith, claiming to be a co-sharer alongwith the appellant and his two brothers i.e. Kewal Singh and Avtar Singh sons of Dilbagh Singh with a consequential relief of permanent injunction restraining the defendants from changing the nature of the property in question. Plaintiff-respondent no.1 pleaded that he alongwith his brothers Joginder Singh, Charanjit Singh, mother Swaran Kaur and sister Joginder Kaur, were co-owners to the extent of $\frac{1}{2}$ share of Khasra No. 336. Remaining half of the Khasra No. 336 was in the joint ownership of Prem Singh and Darshan Singh sons of Swaran Singh. Total area of Khasra No. 336 was one Kanal. Other property to the west of Khasra No. 336 was also in the ownership of the plaintiffs. The property, Khasra No. 336 was pleaded to be a vacant abadi site adjoining the residential house. It was pleaded that about six months prior to the filing of the suit, defendants encroached upon this khasra number as well as on other property of the plaintiff, which was to the west of Khasra No.336. Plaintiff protested, but the defendants who are real brothers raised a boundary wall and affixed barbed wire fencing after encroaching upon the property of the plaintiff. Respondent no.2-Kewal Singh (brother of the present appellant) was stated to have encroached upon the site marked ABE and Avtar Singh-respondent no.3 upon site marked FGHI. It was pleaded that the present

appellant (defendant no.1 before the learned trial Court) raised a boundary wall about 2 to 3 feet in height and respondent no.3-Avtar Singh raised a boundary wall about 4/5 feet high. Defendants had their property to the South of Khasra No. 336 and in order to connect their properties to the main road, they encroached upon the property in dispute. They threatened to raise construction over the site in dispute forcibly after amalgamating the property in dispute in their own properties. Hence, the present suit was filed by respondent no.1.

Appellant alongwith his brothers i.e. respondents no.2 and 3 in this appeal and defendants no.2 and 3 in the suit, contested the suit taking various preliminary objections besides denying the averments on merits. It was pleaded that the property in dispute was within the '*lal lakir*' of village Abadi. A '*Taur*' measuring 9 Marlas was sold to Avtar Singh vide agreement dated 25.12.1992 by Mohinder Kaur widow of Karam Singh, Lakhbir Singh son of Karam Singh and Avtar Singh son of Karam Singh, who is cousin of the plaintiff. Possession was handed over to Avtar Singh on the said date itself. A boundary wall had been raised. Shed was erected and electric motor, electric meter, fodder machine, sugarcane crusher, biogas plant were installed and he was tethering his cattle therein since then. Darshan Singh @ Prem Singh son of Niranjana Singh and others sold one kanal one marla 5 sarsahi area to Amarjit Kaur w/o Kewal Singh and handed over possession on that day. Kewal Singh, defendant, it was stated was in possession of the said land. Joginder Singh, Charanjit Singh and Satnam Singh son of Dharam Singh sold the disputed land to defendant-appellant-Satnam Singh. It was stated that the

plaintiff in connivance with the revenue officials managed to have wrong entries inserted in the revenue record. It was admitted that the defendants had their properties to the south of Khasra No. 336.

Replication was filed by the plaintiff. It was asserted that alleged agreement dated 25.12.1992 regarding 9 Marlas of land confers no title upon any of the defendants. Plaintiff had no concern with the properties of the defendants. In respect to document dated 28.12.2004, it was pointed out that the same was by way of compromise whereby the defendants undertook not to encroach upon any area outside the lal lakir. It was stated that this document dated 28.12.2004 was got typed by the defendants and on misrepresentation signatures of Charanjit Singh and Joginder Singh were obtained. Satnam Singh-plaintiff denied having signed the same.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to possession of suit property?OPP
2. Whether plaintiff is entitled to permanent injunction restraining the defendant from changing the nature of the suit property as well as raising construction over it?OPP
3. Whether plaintiff is estopped by his own act and conduct from filing the present suit?OPD
4. Whether plaintiff has not come to the Court with clean hands?OPD
5. Whether suit is bad for non joinder of necessary parties?OPD
6. Relief.

Evidence was led by both the parties.

Learned trial Court decided issues no.1 to 5 against the defendants and in favour of the plaintiff. Suit filed by the plaintiff, was

accordingly decreed by the learned trial Court. It was specifically held by the learned trial Court that the case of the plaintiff is supported by the Jamabandies for the year 2008-09 (Ex.P-4 and P-5). It was proved on record that the defendants had encroached upon the property bearing Khasra No. 336 and the plaintiff was entitled to the relief as claimed for.

Appeal was preferred by present appellant-Satnam Singh alongwith his brother Kewal Singh impugning judgments and decrees dated 28.09.2012. However, learned Additional District Judge, Hoshiarpur, on considering all the pleas raised by learned counsel for the appellants, dismissed their appeal vide judgment and decree dated 24.12.2015.

Aggrieved of the abovesaid two verdicts, respondent-Satnam Singh son of Dilbagh Singh has filed the present appeal while arraying the other two defendants as proforma respondents.

It is vehemently argued by learned counsel for the appellant that both the learned Courts below have ignored the fact that Ex.D-1 i.e. a 'Panchayati Sale deed' was duly executed by the brothers of respondent no.1 i.e. Joginder Singh and Charanjit Singh. Moreover, witness Pakhar Singh has stated that the plaintiff-Satnam Singh son of Dharam Singh was not of sound mind, therefore, the suit should have been filed through his next friend. It is thus prayed that the impugned judgements and decrees be set aside.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

Plaintiff-respondent no.1 filed the present suit claiming to be

a co-sharer in Khasra No.336 measuring 1 Kanal to the extent of half share. The ownership of the plaintiff-respondent is proved on record as reflected by jamabadies for the year 2008-09, 2003-04, respectively (Ex.P-4 and P-5) and *Aksh Shajra* Ex.P-3. Local Commissioner i.e. Kanungo of Tehsil office District Hoshiarpur was appointed by the learned trial Court to demarcate the disputed property bearing khasra no. 336. Report of the Local Commissioner is on record as Ex.P-6. The Local Commissioner, Malkit Singh, Sadar Kanungo, visited the spot on 25.09.2010. He demarcated the property and came to the conclusion that the defendant had indeed encroached upon the area of Khasra no.336. Defendant-Kewal Singh was reflected to have encroached upon 7 Marlas and defendant-Avtar Singh upon 4 Marlas and the present appellant-Satnam Singh on 5 Marlas of land. The contention on behalf of learned counsel for the appellant that the report is not proved on record, is not tenable as it is a matter of record that the defendants never raised any objection thereto and led no evidence to rebut the same. The said report has been rightly relied upon.

Much stress has been laid by learned counsel for the appellant on 'Panchayati Sale Deed' dated 28.12.2004 (Ex.D-1) executed by Charanjit Singh and Joginder Singh sons of Dharam Singh i.e. real brothers of the plaintiff. Though, it was contended that the plaintiff-Satnam Singh was also a party to the said instrument, it is a matter of record that he is not a signatory to Ex.D-1. Moreover, there is no recital of any khasra number in Ex.D-1. The property described to be sold is stated to be within the '*lal lakir*' of the village. The plaintiff has sought

the relief qua Khasra no.336 and not in respect to the land within the '*lal lakir*' of the village. Therefore, no reliance whatsoever can be placed on Ex.D-1. It has been rightly held that there is no conflict with regard to the description of the property. The contention raised on behalf of the defendants that it is due to misrepresentation on the part of the plaintiff/his brothers that proper description of the property was not mentioned in Ex.D-1, is totally unsubstantiated from the evidence on record. None of the defendants stepped in the witness box. DW-1- Gurmail Singh, tendered his evidence by way of affidavit, but failed to appear before the learned trial Court to face cross-examination. Therefore, the learned Courts below have rightly ignored the same. Similarly, there is no merit in the argument raised on the basis of the statement of Pakhar Singh.

No other argument has been raised.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 28.09.2012 and 24.12.2015 passed by the learned Civil Judge (Jr. Division) Hoshiarpur and learned Additional District Judge, Hoshiarpur, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

03.08.2018
s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No