

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3360 of 2016(O&M)

Date of Decision: 20.8.2018

Sudesh Kumar

---Appellant

versus

Rajinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rajeev Dev Sharma, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for possession of the portion marked 'DCFE' shown in red in the site plan forming part of land bearing khewat No. 33, khatoni No. 79, khasra No. 22R9, 11/1 total measuring 8 kanal 5 marlas, situated in village Seora Khurd, Had Bast No. 96, Tehsil Pathankot, District Gurdaspur was decreed by the trial court and the appeal preferred by unsuccessful defendant-appellant did not find favour with the District Judge, Pathankot.

The sole submission made by counsel for the appellant is that the respondents-plaintiffs filed the suit for possession by claiming themselves to be owners of khasra No. 22R9 11/1 with the averments that disputed area has been encroached upon by the defendants including the appellant, reflected in site plan Ex. P3. The respondents-plaintiffs have not proved document of title to establish that they are owners of khasra No. 22R9 11/1, therefore, the courts have committed a serious error rather

illegality by decreeing suit of the plaintiffs-respondents for possession.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned.

Counsel for the appellant has failed to point out averments in the written statement or plea during the course of evidence whereby they have contested claim of the plaintiffs to be owners of khasra No. 22R9 11/1. The defendants have raised a plea that disputed portion is a part of abadi, therefore, the plaintiffs have no connection with the land underneath the construction existing at the spot in the shape of a wall, septic tank and lavatory etc.

The trial court has noticed that Rajinder Singh one of the plaintiffs appeared in the witness box and produced jamabandi for the year 2006-07 Ex. P4 to prove that he is owner in possession of 11 marlas of land comprised in khasra No. 22R 9/11/1 and khasra girdawari Ex. P5. Rajesh Kumar Draftsman PW2 was examined to prove the site plan Ex. P3. The trial court appointed a local commission to conduct demarcation at the spot on the basis whereof, the local commission submitted his report to the effect that land measuring 2 marlas is under illegal possession of Satish Kumar and site plan Ex. P2 depicting illegal possession of land measuring 40 X 12 square feet, reflected in yellow colour, was submitted. The appellant neither filed any objection against the demarcation conducted by the local commission appointed by the Court nor availed an opportunity to cross examine him in order to challenge correctness of the report prepared by the local commission that land comprised in the aforesaid khasra number has been encroached upon by the appellant to the extent indicated in the demarcation report and site plan Ex. P2. The trial court has further noticed

that Asha Nand DW3, a witness examined by the defendants admitted entire case of the plaintiffs with regard to their ownership of land measuring 11 marlas comprised in the aforesaid khasra numbers, site plan Ex P3 showing construction of the wall, septic tank and lavatory, location of land of the plaintiffs and their houses. Similarly, the Court in appeal, on a detailed consideration of the facts elicited in cross examination of witnesses of the defendants has proceeded to affirm findings of the trial court. As the appellant never claimed ownership of khasra No. 22R9, 11/1 not led evidence in order to counter the demarcation report prepared by the local commission nor has been able to substantiate his plea that the disputed area is part of abadi, it is difficult to accept contention of the appellant that consistent findings recorded by the courts suffer from perversity or raise a question of law. I would hasten to add that jamabandi may not be a document of title but it is certainly an evidence of title to agricultural land. As appellant has not claimed ownership right in the disputed khasra numbers and the disputed area is proved to be part of khasra numbers in question, which has been proved to be encroached upon by the appellant to the extent indicated in the report of the local commission, findings recorded by the courts neither suffer from perversity nor call for intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

20.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No