

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.3833 of 2016 (O&M)
Date of Decision.15.11.2018**

Ranbir and others

...Appellants

Vs

Udai Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Kumar Sharma, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.9956-C of 2016

For the reasons stated in the application, delay of 59 days
in re-filing the appeal is condoned.

Application is allowed.

C.M. No.9958-C of 2016

For the reasons stated in the application, delay of 10 days
in filing the appeal is condoned.

Application is allowed.

RSA No.3833 of 2016

The appellants-defendants have not been successful in
defending the suit decreed for possession along with mesne profits to
the tune of Rs.1000/- per month from 28.05.2003 till the date of
delivery of the actual possession.

The respondents-plaintiffs claimed possession on the
basis of title on the premise that plaintiff No.1 owner of half share
whereas plaintiff No.2 to 4 were owners in equal share. The
application was moved to the Naib Tehsildar for demarcation of the

plot and one Har Bhagan Dass, retired Kanungo was appointed as local commissioner. At the time of demarcation, it was found that the defendants had encroached upon the suit land in the following manner:-

“North : 33' shown by letters EF

South : 3' shown by letters CD

East : 8'6” shown by letters DE

West : 12'9” shown by letters CF”

The defendants were requested to vacate but they refused to do so. Civil suit was filed for permanent and mandatory injunction but the same was dismissed vide judgment and decree dated 06.05.2010 and during the pendency of appeal, new counsel was engaged, who after inspection of the file found that there was a formal defect in the suit, thus, permission was sought to file the fresh suit.

The defendants opposed the suit by denying inspection of the premises by retired kanungo and as well as site plan.

Learned counsel appearing on behalf of the appellants submitted that demarcation report was at the back of the appellants-defendants and therefore, could not have been looked into. No evidence with regard to mesne profits at the rate of ₹1000/- per month has been led, therefore, judgment and decree of the Courts below had arrived at an imaginary figure or the amount claimed by the plaintiffs cannot be treated to be a sermon. It was obligatory upon the plaintiffs to establish through direct and cogent evidence regarding the use and occupation charges.

I am afraid argument of Mr. Sharma is not sustainable, for, plaintiffs in respect of their pleadings had brought on record revenue record and demarcation report Ex.P2 to establish the unauthorized possession. The defendants though admitted to believe report of demarcation but failed to lead any evidence. Even Draftsman PW4 who prepared the site plan had been examined. The plea of adverse possession was also taken but the same has not been proved. A person, who does not approach the Court with clean hands cannot be permitted to retain unauthorized occupation without paying use and occupation charges.

This is what is the import of judgments and decrees of the Courts below in determining mesne profits to the tune of ₹1000/- per month from the date as mentioned above, which in my view, do not suffer from any illegality and perversity. No substantial question of law arises for determination by this Court, much less, no ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 15, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No