

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-4330-2016 (O&M)

Date of Decision: 17.5.2018

Sunder Singh

....Appellant.

Versus

Smt. Ratna and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Ajay Ghangas, Advocate for the appellant.

AJAY KUMAR MITTAL, ACJ.

1. This regular second appeal filed by the appellant-defendant No.1 arises from the judgment and decree dated 29.10.2014 passed by the Additional District Judge, Bhiwani, affirming that of the Additional Civil Judge (Senior Division), Charkhi Dadri dated 26.8.2011 vide which the suit of the plaintiff for possession, was decreed.

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The plaintiff was owner in possession of the land measuring 5 kanals 18 marlas situated within the revenue estate of Mauja Rankoli, Sub Tehsil Bound Kalan, Tehsil Charkhi Dadri, District Bhiwani, as detailed in para 1 of the plaint. Defendant No.1 had taken the land measuring 7 kanals 9 marlas on lease for a sum of ₹ 10,000/- per annum on 1.10.2004 from Shri Bir Singh vide registered lease deed dated

Corporation. Defendant No.1 had leased out the said land vide lease agreement dated 31.12.2004 to Hindustan Petroleum Limited for the installation of the petrol pump. Defendant No.1 had unauthorizedly encroached upon 16 marlas land of the plaintiff and constructed a boundary wall. The plaintiff requested defendant No.1 to vacate the said land, but to no effect. Accordingly, the plaintiff filed a suit for possession and permanent injunction. The said suit was contested by defendant No.1 by filing a written statement and raising various preliminary objections therein. It was pleaded therein that defendant No.1 had raised the construction in the presence of the person from whom he had taken the land on lease. It was further pleaded that no demarcation was carried out at the spot and if there was any such demarcation then the same was only a paper transaction. Although, defendants No.2 and 3 were proceeded exparte but they had filed a joint written statement raising various preliminary objections. It was pleaded therein that defendants No.2 and 3 had no concern with the physical possession of the suit land for boundary wall of the petrol pump raised by defendant No.1. The rest of the averments made in the plaint were denied and a prayer for dismissal of the suit was made. The plaintiff filed the replications controverting the averments made in the written statements and reiterated the averments made in the plaint.

3. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for the relief of possession qua the suit land upto the extent of 0 Kanal 16 Marlas, if so, its effect? OPP
2. If issue No.1 is proved, whether the plaintiff is

entitled for the relief of injunction as prayed for?

OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Relief.

4. The trial court on appreciation of the oral as well as the documentary evidence led by the parties held that the plaintiff had been able to prove the factum that the defendant had encroached upon her land measuring 0 kanal 16 marlas covered by rectangle and killa No. 101//16/1/2 into their boundary wall. Further, it was held that the jamabandi Ex.P3/B also proved the ownership of the plaintiff over the land in dispute. Accordingly, the trial Court vide judgment and decree dated 26.8.2011 decreed the suit of the plaintiff. The conclusion recorded by the trial court reads thus:-

“From the evidence led on the part of the plaintiff came on the case file, the plaintiff has also been able to prove that some debris (Malba) is lying in her land covered by rectangle and Khasra No.101//25 as shown by the Local Commissioner. There is no doubt that this land covered by rectangle No. 101//25 is also owned by the plaintiff as there is no such objection on part of the defendants. Accordingly, the plaintiff has been able to prove the factum that the defendants have encroached upon the land owned by the plaintiff measuring 0 Kanal 16 Marlas covered by rectangle and Killa No. 101//16/1/2 into their boundary wall. There is no doubt in the mind of this

court regarding the ownership of the suit land in favour of the plaintiff which fact is clear from Jamabandi Ex.P3/B which shows the ownership of the plaintiff over the land in dispute. Further the plaintiff has also been able to prove that some part of rectangle and Killa No.101//25 towards its northern side has been covered by the defendant by throwing the debris/Malba which they are liable to clear.”

5. Feeling aggrieved, defendant No.1 filed an appeal and the lower appellate Court vide judgment and decree dated 29.10.2014 affirmed the findings recorded by the trial Court and dismissed the appeal holding that as per the demarcation report dated 29.11.2005, Ex.P1, Local Commissioner's report, Ex.P5, Akshizra Ex.P26, and the site plan, Ex.P2, defendant No.1 had encroached upon the land of the plaintiff measuring 16 marlas. Hence, the present appeal claiming the following substantial questions of law:-

- “i) Whether the finding of both the lower courts below is perverse, wrong, illegal and against the law in view of the evidence brought on record?
- ii) Whether the demarcation done in the absence of defendant No.1 and without issuing any notice to him can be relied upon?
- iii) Whether the demarcation done against the instructions of Financial Commissioner can be looked into?
- iv) Whether the judgment and decree passed by both

the Courts below is sustainable in the eyes of law especially when the plaintiff miserably failed to prove that defendant No.1 has unauthorized encroached upon her land measuring 0 kanal 16 marla?

6. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

7. Learned counsel for the appellant has made efforts to persuade this Court to come to a different conclusion than that of the courts below but could not show any material on the basis of which it could be held that the concurrent findings recorded by the courts below suffer from any misreading or misappreciation of evidence which may warrant interference by this court in the regular second appeal. The courts below have concurrently held that the plaintiff had proved that the defendants had encroached upon the land of the plaintiff measuring 0 kanal 16 marlas covered by rectangle and Killa No. 101//16/1/2 into their boundary wall. Accordingly, the defendants were directed to handover the vacant possession of the land measuring 16 marlas to the plaintiff.

8. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

9. In view of the above, there is no merit in this appeal and the same is hereby dismissed. There shall, however, be no order as to costs.

10. CM-11318-C-2016 has been filed under Section 5 of the Limitation Act, 1963, for condonation of 548 days' delay in filing the appeal. No satisfactory explanation has been furnished for this inordinate delay. Accordingly, application for condonation of delay of 548 days is

dismissed. Consequently, the appeal is dismissed on merits as well as barred by limitation.

May 17, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned	Yes
Whether Reportable	Yes