

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4588 of 2016 (O&M)
Date of decision:24.08.2018.

Puran Singh (deceased) through LRs

...Appellant

Versus

Ranbir Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Meenakshi Sharma, Advocate for the appellant.

LISA GILL, J.

CM No.11886-C of 2016

For the reasons mentioned in the application and arguments addressed, delay of 43 days in refiling of the appeal is condoned.

Application is allowed.

RSA No.4588 of 2016

The plaintiff/appellant is aggrieved of the judgment and decree dated 31.01.2015 passed by learned Additional Civil Judge (Senior Division), Bahadurgarh as well as the judgment and decree dated 22.12.2015 passed by learned Additional District Judge, Jhajjar, whereby suit for possession and permanent injunction filed by the plaintiff was dismissed.

Brief facts necessary for adjudication of the case are that the plaintiff, represented through his legal heirs, pleaded that he was the owner in exclusive possession of plot bearing No.757/2, out of Khewat

No.1090/921, Khatauni No.1738 situated within the revenue estate of village Bahadurgarh, District Jhajjar, as per jamabandi for the year 1999-2000 read with 'Aks Shajra' and mutations bearing No.8265 and 8266. Plot of the defendants was existed on the southern side of the plot of the plaintiff and they were interfering in the peaceful possession of the plaintiff over the plot in question at that time. It was pleaded that in the intervening night of 22/23.03.2008, the defendants encroached upon the red portion of the land marked as EFDC in the site plan attached with the plaint and raised construction (a six foot high wall) thereon. Despite requests, illegal construction was not removed by the defendants. Hence, suit was filed.

Respondents resisted the suit. Joint written statement was filed taking various preliminary objections. They denied the claim of the plaintiff on merits. It was pleaded that their house was situated on the southern side of plot No.757/2, but no encroachment had been made by them. Rather it was the plaintiff who had encroached upon a portion of their plot towards the eastern side along with the line 'AB' as shown in the site plan relied upon by them with specific demarcations and boundaries around 30 years prior by raising construction of a wall despite objections. However, later on it was agreed to keep the wall marked 'AB' as common between them. Thereafter, the defendants started putting debris over the wall and since then the wall was in joint possession of the parties. The suit, it was thus pleaded be dismissed.

Replication was filed. From the pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiff is entitled to the decree for possession of plot in question, as prayed for? OPP

2. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for on the grounds mentioned in the plaint? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
6. Whether the suit is not properly valued and plaintiff has not paid the sufficient ad-valorem court fee on plaint? OPD
7. Relief.”

Evidence was led by both the parties. Learned trial Court, on considering the evidence on record, dismissed the suit filed by the plaintiff while holding that he had failed to prove any encroachment upon the plot in question. Appeal filed by the plaintiff/appellant was also dismissed by Additional District Judge, Jhajjar, vide judgment and decree dated 22.12.2015. Aggrieved there-from, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned Courts below have wrongly dismissed the suit filed by the plaintiff/appellant. Reference is made to the report of the Local Commissioner Surender Kumar, Naib Tehsildar, PW2, who submitted that the area, which has been encroached upon, has specifically been mentioned in the site plan Ex.P5 attached with his report Ex.P6. Thus, both the learned Courts below have ignored the clear cut and cogent evidence of the plaintiff on record. It is

thus prayed that the appeal be allowed, consequently decreeing the suit filed by the plaintiff/appellant.

I have heard learned counsel for the appellant and have perused the file as well as certified copies of the documents furnished in Court today.

The case set up by the plaintiff is that the defendants have encroached upon the area of plot bearing No.757/2 of which the plaintiff is exclusive owner in possession. A wall of about six feet height had been raised by the defendants on the intervening night of 22/23.03.2008. Reliance has been placed upon the report (Ex.P6) of the Local Commissioner, PW2, who had been appointed by the learned trial Court. Learned counsel for the appellant further submits that the defendants were very well present at the time of demarcation of the land but they had refused to sign on the said report. It is noticed that both the learned Courts below have discarded the report of the Local Commissioner as not being worthy of any credence. PW2 Surender Kumar, Naib Tehsildar, Local Commissioner has stated in his testimony that he had taken the assistance of the Halqa Patwari and Girdawar along with their record. The attendance sheet, demarcation report and the notice to the parties to the suit (Ex.P6 to P8) were not prepared by him, but by the Girdawar Ramesh Kumar, who admittedly failed to step in the witness box. PW2 further stated that seven-eight persons were present at the spot who had duly signed the attendance sheet (Ex.P7) whereas on perusal of the said attendance sheet it was observed that there were only four persons including the plaintiff but none of them signed on the said attendance sheet. It is, however, not in dispute that Surender Kumar, PW2 had not even measured and mentioned the dimension of the plot in question. No details of the sides of khasra No.751, 753 and 761 had been mentioned. It is not clear

as to how the demarcation was carried out and why the measurement was not made from other corners of plots No.752/2 and 758. Ex.P2 is the certified copy of the 'Aks Shajra' pertaining to plot No.757/2. The discrepancy in the measurement indeed shatters the sanctity of demarcation report (Ex.P6). In this view of the matter, it is correctly held that the very identity and correctness of the base points is also doubtful. Moreover, PW2 in his cross examination clearly stated that in his presence only plot No.752/2 was measured/demarcated and no other plot was demarcated and he cannot tell as to what lies in the immediate surrounding of the said plot i.e. the details of the property on the four different sides. It is not in dispute that as per report (Ex.P6) base points were not taken from the corner stones/stones meant for demarcation lying at every corner and the base points were taken from the corners of other plots/khasra numbers. Puran Singh, PW1 in his cross examination expressed ignorance about whether his father after purchase of khasra No.752/2 got constructed the boundary wall or not. In respect to the wall on the southern side, he admitted that the same was constructed 40 years back. He claimed ignorance about the height of the wall existing between khasra No.757 and 758. It is rightly observed by the learned Additional District Judge that in view of the statement of PW1 Puran Singh wherein it is revealed that his real brother had been elected MLA of the area twice and he himself was the Municipal Councillor of the area, it is not probable that defendants could have raised a six foot high wall overnight, but the plaintiff took no immediate action against the defendants. Admittedly, no criminal complaint or any other complaint was ever submitted by the plaintiff in this respect. Both the learned Courts below have rendered concurrent findings of fact based on the evidence on record.

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 judgements are well reasoned, rendered after proper appreciation and consideration of 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 decrees dated 31.01.2015 and 22.12.2015 passed by the learned Additional Civil Judge (Sr. Division), Bahadurgarh and learned Additional District Judge, Jhajjar, respectively, which warrant any interference by this Court.

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

(LISA GILL)
JUDGE

August 24, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No