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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2166-2017 (O&M)
Date of decision : 08.03.2018

Arjun Dass (deceased through LRs)

... Appellant(s)

Versus

Satnam Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shrey Goel, Advocate
for the appellant.

Mr. Sanjiv Gupta, Advocate
for the Caveator.

AMIT RAWAL, J. (ORAL)

CM-5261-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 78 days in filing the appeal is condoned.

RSA-2166-2016

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit for permanent injunction has been dismissed by the trial Court vide judgment and decree dated 31.07.2012 and upheld by the lower Appellate Court vide judgment and decree dated 15.09.2016.

The appellant-plaintiff instituted the suit seeking injunction against the defendants from interfering in peaceful possession over the suit land on the pretext of the wrong demarcation of the land as paddy crop sown by the plaintiff was likely to be destroyed. It was averred that the

plaintiff had sown paddy crop over the land and on 15.06.2004, he and his sons came to know that someone had moved an application before the Tehsildar, Gharaunda, for demarcation of the land without notice to him. Apprehending the danger of destruction of paddy crop, Madan Lal one of the sons of the plaintiff moved an application dated 15.06.2004 before the Tehsildar, which was marked by Tehsildar to Halqa Patwari, by assuring that no *nishandei* would be conducted during the paddy crop season. On 18.06.2004, the revenue authorities came to the premises for demarcation of the property, necessitating the appellant-plaintiff, to institute the aforementioned suit in the year 2004.

The aforementioned suit was contested by defendant Nos.1 to 3 by taking the preliminary objection qua maintainability, *locus standi* and on merits, it was stated that other co-sharer of the land adjacent to the suit land was not impleaded. It was also stated that the plaintiff and his sons along with nephews had illegally demolished the "*murabba line*" comprised in Rect No.110, Killa No.23 & 24 Rect. No.113 Killa No.3 & 4 and Rect. No.111. It is, in this backdrop of the matter, the defendants were constrained to move an application for demarcation of the aforementioned land, thus, the suit was not maintainable.

The trial Court on the basis of the pleadings framed the following issues:-

“Whether the suit of the plaintiff is maintainable in its present form?”

The plaintiff (since deceased represented by LRs) in support of his case examined Madan Lal (PW-1), one of the sons of the plaintiff and reiterated the version made in the plaint and brought on record documents

Ex.P1 to Ex.P17 and Mark A & B i.e. application made to the Police and Tehsildar Gharaunda to stop the demarcation.

To controvert the aforementioned evidence, the defendant examined himself, DW1 Satnam Singh, Som Nath (retired) Kanungo DW-2, Rajidner Singh, Patwari, DW-3 and brought on record the various documents.

The trial Court on the basis of the preponderance of the evidence dismissed the suit and the appeal preferred thereto before the lower Appellate Court also met with the same fate.

Learned counsel for the appellant-plaintiff submits that both the Courts below have committed illegality and perversity in not granting the injunction as if the demarcation could not have been stopped, at least there should have been status quo qua forcible and illegality interference, much less, dispossession, for, documentary evidence brought on record established the exclusive possession of the appellant-plaintiff. No person could be permitted to take the law in hand, even if, the parties were not owner, though question of ownership was not involved in the present case. The demarcation was a ploy of forcible dispossession. The aforementioned evidence has not been noticed by both the Courts below, thus, there is illegality and perversity.

I have heard the learned counsel for the appellant and appraised the paper book and am of the view that there is no merit and force in the submissions of Mr. Goel, for, the evidence brought on record did not establish that the defendants had attempted to demarcate the land for the purpose of causing any forcible dispossession and the same was only on the premise that there was a demolition of "*murabba line*" at the instance of the

plaintiff, which was sought to be corrected. No person can be permitted to perpetuate the illegally by taking the aid of the alleged illegal act. Both the Courts below found that the plaintiff had not approached the Court with clean hands, much less, there was a concealment as noticed in the judgment and decree.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the present regular second appeal is dismissed.

08.03.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No