

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-2286-2018 (O&M)

Date of decision: 30.05.2018

Nathi Singh and others

..... Appellants

Versus

Dhram Pal Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Ashok Aggarwal, Advocate for the appellants.

RAMENDRA JAIN, J. (ORAL)

1. Un-successful defendant-appellants after losing in two Courts, have approached this Court by way of this Regular second Appeal, challenging the judgment and decree dated 29.04.2017 of the Ist Appellate Court, affirming the judgment and decree of the trial Court dated 09.01.2015, whereby suit of the respondent-plaintiff for possession with consequential relief of permanent and mandatory injunction in the alternative, was decreed in toto with costs.

2. Briefly stated, respondent-plaintiff purchased 2 kanals of land situated in the revenue estate of village Machgar, Tehsil Ballabhgarh, District Faridabad, vide registered sale deed in the year 1977 and was in possession of the same since 02.12.1977. Mutation No.1574 dated 25.03.1980, was also sanctioned in his favour. However, in the month of July, 2002, the appellants and one Bijendri started raising wall in the Southern side of Khasra No. 10/1/1/3 and 10/3/4 by 8 feet in the Eastern

side and 10¹/₂ feet in the western side of Rect. No. 33 to the length of 14

karam, owned by the respondent-plaintiff, illegally and forcibly by encroaching upon a area measuring about 85 square yards, as per demarcation report dated 17.12.2002. On asking of the respondent-plaintiff, the appellants did not refrain themselves from raising wall illegally, forcing the respondent-plaintiff to file a suit for possession with consequential relief of permanent and mandatory injunction, against the appellants and one Bijendri wife of Kanwar Singh.

3. After due notice and holding trial, the learned trial Court decreed the suit in toto vide judgment and decree dated 09.01.2015.

4. Being aggrieved, the appellant-defendants approached Ist Appellate Court, laying challenge to the aforesaid judgment and decree, but remained un-successful as their appeal too was dismissed vide judgment and decree dated 29.04.2017.

5. Learned counsel for the appellants contends that both the Courts below have ignored the statement of DW-3 Sharda Ram, vendor of the respondent-plaintiff, who categorically testified that he had not sold the suit land to the respondent-plaintiff, rather had sold some other land falling on its Northern side. The demarcation report Ex. P-2 and site plan Ex. P-3 prepared by PW-4 Bhim Singh retired Kanungo, have wrongly and illegally been considered by both the Courts below, being not legally proved and objected to by the appellant-defendants. The same could not have been taken into consideration by both the Courts below, in view of the fact that the appellants were never served properly before demarcating the suit land. The Revenue Patwari, who had allegedly served the appellant-defendants was not examined.

6. Having given considerable thought to the submissions made by

learned counsel for the appellants, this Court finds the instant appeal being completely devoid of any merit for the reasons to follow:

7. The appellant-defendants in their written statement took following two contradictory stands:-

- (i) They were owner in possession of the suit land.
- (ii) In case, they failed to prove themselves to be owner of suit land, in that eventuality, their possession since 1960 has perfected into their title by way of adverse possession.

8. Learned counsel has fairly conceded that the appellant-defendants did not lead any evidence proving their title over the suit land. Therefore, now it has to be seen only as to whether the appellant-defendants could prove their title on the basis of their alleged adverse possession over the suit land.

9. It is pertinent to mention here that to claim title on the basis of adverse possession, specific date and time has to be proved occupying the property to the knowledge of its real owner and open to all. In the instant case, the appellants have taken vague plea of their adverse possession over the suit land since the year 1960, not disclosing the date and time, when they entered into possession of the suit land.

10. The demarcation report Ex. P-2 and site plan Ex. P-3 was prepared by Bhim Singh, retired Kanungo, who by appearing as PW-4 proved the same. In cross-examination, a specific question was put to him by learned counsel for the appellant-defendants, as to whether the demarcation was done in the presence of appellant-defendants, to which he replied in affirmative, clarifying that they refused to sign the attendance

sheet. Though objection was raised by appellant-defendants to the exhibition of aforesaid demarcation report Ex. P-2 and site plan Ex. P-3, but they never dispelled the same by leading any evidence, what to talk of any cogent and convincing.

11. In the absence of any rebuttal to aforesaid demarcation report Ex. P-2 and site plan Ex. P-3, the same have rightly been relied upon by both the Courts below, more particularly, when the appellants never made any effort at any stage before both the Courts below to get the suit land re-demarcated through a Local Commissioner or some official of the Revenue Department. The above conduct of the appellant-defendants requires to draw an adverse inference that they did not adopt any such exercise intentionally and deliberately, knowing well that demarcation report Ex. P-2 and site plan Ex. P-3 were genuine, legal and valid.

12. I have gone through the judgments of both the Courts below and find no illegality or perversity in the same.

13. No question of law, much less substantial, has been raised in this appeal.

14. In view of the discussion made above, this Court is not inclined to differ with the concurrent findings recorded by both the Courts below. The instant Regular Second Appeal, being meritless, is dismissed.

May 30, 2018
rishu

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No