

RSA-2961-2017 (O&M)
Date of Decision: 07.08.2018

Satpal and another

....Appellants

Versus

Santra Devi

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Mr. Chanderhas Yadav, Advocate
for the applicants/appellants.**DEEPAK SIBAL, J. (ORAL)**

The facts in brief which have been culled out from the record as also after hearing learned counsel for the appellant are that the respondent filed a suit seeking therein permanent injunction for restraining the appellants/defendants from interfering in her peaceful possession over the suit property detailed and described by her in the plaint. A decree of mandatory injunction was also sought. The case set up by the respondent was that by virtue of sale deed dated 11.03.2007, she had become owner in possession of the suit property and that she had purchased the suit property for the purpose of constructing a shop thereupon. However, the appellants started interfering in her peaceful possession leading to the filing of the instant suit.

On being put to notice, the appellants appeared before the Trial Court and denied the claim set up by the respondent. While denying the site plan attached with the plaint it was submitted that appellant No.2 had purchased a land/shop in question vide sale deed dated 25.03.2010 of which possession was also handed over to her. A site plan of the suit property

which the appellants claimed to be the correct one was also attached with

their written statement.

The Trial Court after sifting the evidence which had come on record, decreed the respondent's suit. Against such decree, the appellants preferred an appeal before the Appellate Court on dismissal of which the present second appeal has been preferred.

Learned counsel for the appellants submitted that both the Trial Court as also the Appellate Court have erred in decreeing the respondent's suit as according to him since both the parties to the suit were co-sharers, the proper course for the respondent was to file a suit for partition and not a suit for injunction. It was further submitted that as per the site plan produced by the appellants, in fact it was the husband of the respondent who had encroached upon the respondent's property and not the appellants.

The submissions made by learned counsel for the appellants have been considered but they do not warrant a favourable response.

The respondent through oral and documentary evidence duly proved herself to be the owner in possession of the suit property. To decipher whether there was any encroachment upon the property of the respondent by the appellants, the Trial Court appointed a Local Commissioner to demarcate the suit property. After demarcation, the Local Commissioner submitted a report dated 09.07.2014 as per which the appellants were found to had encroached upon 14 square yards of the respondent's land. The appellants filed objections to the demarcation report submitted by the Local Commissioner to the effect that such report had been prepared in their absence and thus, could not be relied upon. A perusal of the record reveals that the Local Commissioner was appointed by the Court in the presence of the counsel for the appellants and that the Local Commissioner had duly

intimated the appellants about the date and time when he would be going to demarcate the property. However, the appellants remained absent at the time of demarcation. The only inference that can be drawn from their absence is that they knew that the report is going to be adverse *qua* them and that if they remain absent they can raise an objection regarding non-intimation by the Local Commissioner at the time of final arguments. What is more interesting is that no written objections to the report of the Local Commissioner were ever filed by the appellants. They even did not call the Local Commissioner for his cross-examination in spite of the fact that such opportunity was available to them.

In spite of having knowledge of the appointment of the Local Commissioner and the date and time when he would to demarcate the suit property, the appellants feigned ignorance about the same which also speaks volumes about their conduct. Further, during the pendency of the suit, they not only encroached upon the respondent's property but also raised construction thereupon and this fact was admitted by appellant No.1-Satpal himself.

The demarcation report sought to be relied upon by the appellants was concurrently found by both the Trial Court as also the Appellate Court to pertain to some other land and not the suit property and, therefore, the same was rightly discarded by both the Courts especially in the light of the demarcation report by the Local Commissioner appointed by the Trial Court which was duly proved and a perusal of which shows that the same was authored by a revenue official against whom no *malafide* are even alleged. The Local Commissioner is further found to have taken all necessary

precautions while demarcating the suit property as he fixed the required

pucca points before affixing the identity of the suit property. After such demarcation, the appellants were found to had encroached upon 14 square yards of the respondent's property.

In view of the above, no perversity is found in the concurrent findings of fact returned by the Trial Court as also the Appellate Court and therefore, warrant no interference.

No question of law much less a substantial question of law is also found to arise in the present second appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

07.08.2018

Neha

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No