

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.6161 of 2014 (O&M)
Date of Decision:07.08.2018**

Mehnga Singh

...Appellant

Versus

Mehar Chand and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rajiv Joshi, Advocate for the appellant.
Mr.Sanjeev K.Bawa, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, while decreeing a suit for mandatory injunction, directing the defendant to hand over the vacant possession of the suit premises.

The plaintiffs claimed that they are Non-Residents Indian and they had constructed a house in an area of 10 marlas comprised in Khasra Nos. 184, 178 and 183. They further claimed that since they were residing abroad, therefore, they gave it on licence to the defendant-Mehnga Singh son of Tulsi Ram. However, it was pleaded that though the licence has been terminated but the defendant refuses to hand over possession of the property.

On notice, the defendant contested the suit and pleaded that this house was constructed by Shri Hariya Ram in the year 1966. It was pleaded that Hariya Ram had adopted the defendant and after the death of Hariya Ram, he has come in possession of the property.

During the pendency of the suit, property was got demarcated by a revenue official, who submitted his report. In fact, the property is part

of Khasra Nos.184, 178 and 183. It will be significant to note here that Tulsi Ram, natural father of the defendant, was present at the time of demarcation.

Both the courts after examining the evidence available, have decreed the suit filed by the plaintiffs.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the courts below and the record.

Learned counsel for the appellant has submitted that no doubt revenue record i.e. jamabandi for the year 2002-03 had been produced but that jamabandi is with respect to a larger area and the plaintiffs are only co-owners in the same. He has further submitted that the plaintiffs are not proved to be absolute owners of the property. He has next submitted that demarcation, which was carried out by Surinder Singh, Kanungo (PW-5), was wrong and against the instructions as no pucca points were determined while carrying out demarcation. He has further contended that oral evidence led by the plaintiffs is not sufficient to prove their title.

This Court has considered the submissions made by the learned counsel for the appellant, however find no substance therein.

It is not in dispute that the plaintiffs are co owners in the land in dispute. It is further not in dispute that neither the defendant nor his father is or was co-owner. Therefore, ownership of either the defendant or his natural father or of Hariya Ram, who is alleged to have adopted the defendant is not proved. Still further, the present case was based on documentary evidence. Evidence of title has been produced by the plaintiff which has a presumption of truth and the aforesaid presumption has not

been rebutted by the defendant, therefore, small variation in the oral evidence would not be fatal to the case of the plaintiffs.

Further, a competent revenue official had demarcated the area. He has also appeared as PW-5 in evidence and proved his report. It is not in dispute that since the entire area is already under construction, therefore, survey pillars or pillars which were installed at the time of consolidation are obviously not traceable. In such circumstances, demarcation has to be carried out from a point correctness whereof was not disputed by the parties. In the present case, demarcation was started from Street No.17. As noticed earlier, Tulsi Ram, natural father of defendant, was present at the time of demarcation but he did not object thereto.

No other argument was raised.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the courts below. Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

07.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No