

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.4554 of 2017 (O&M)

Date of Decision.22.01.2018

Nidan

.....Appellant

Vs

Japan

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Hariom Sharma, Advocate
for the appellant.

-:-

AMIT RAWAL J.(ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit of the respondent-plaintiff claiming the following relief has been decreed:-

“A decree for mandatory injunction directing the defendant to remove his illegal encroachment from the plot in question and to handover the vacant possession of the plot to the plaintiff along with consequential relief of permanent injunction restraining the defendant from interfering into the peaceful ownership of the plaintiff in future over the plot in question in any manner may kindly be passed in favour of the plaintiff and against the defendant with costs.”

Mr. Hariom Sharma, learned counsel appearing on behalf of the appellant submitted that the respondent-plaintiff instituted the suit seeking relief *ibid* on the premise that he was allotted the plot in question in the year 1981 but the fact of the matter is that there was a condition of the allotment that in case construction is not completed or done, the plot would be resumed.

Allotment of plot No.2 had been made in favour of the appellant-defendant in

the year 1980-81. The aforementioned fact is proved through Ex.D2 i.e. application submitted by the villagers for allotment of plot to the Gram Panchayat wherein it has been recorded that Japan was given plot No.17 had no concern with plot No.2. The aforementioned document has not been read into correct perspective, resulting into perversity. In other words, if the aforementioned document had been taken into consideration, the suit of the respondent-plaintiff was liable to be dismissed.

The respondent-plaintiff had placed on record certain evidence qua possession of plot No.17 and not of plot No.2. Ex.D5 in the suit of Japan i.e. statement of Japan recorded before the Gram Pachayat in a compromise is also testimony to the same effect. Photographs were also placed on record. In fact, the appellant-defendant had been in possession of plot No.2 since its allotment and the suit *ibid* was filed in the year 2010 i.e. after 34 years. All these facts if read cumulatively would have resulted in dismissal of the suit, thus, urges this Court for determination of the substantial questions of law as formulated in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the paper book. The respondent-plaintiff in order to prove the relief sought in the aforementioned suit examined himself as PW1, Sant Kumar as PW2, PW3- stenographer from the office of SDM, Rohtak, who brought the summoned record Ex.PW3/A to Ex.PW3/G attested by the SDM, PW4, Patwari who had brought the summoned record regarding the inspection of the spot his report dated 1.8.2010 as Ex.PW3/A and PW5, Rajbir Singh, Halqa Patwari brought summoned record i.e. mutation, aks-shizra (cloth map) and jamabandi Ex.PW5/A to Ex.PW5/C. On the contrary, the appellant-defendant had brought following evidence:-

Ex.D2	Application for allotment of plot by villagers.
Ex.D3	Letter written by S.P. to I.G. with regard to the matter of Japan son of Lilu Ram, defendant.
Ex.D4	Compromise between plaintiff and defendant effected before the Panchayat.
Ex.D5	Statement of Japan recorded before the panchayat regarding compromise.
Ex.D6	Statement of Japan recorded by the police.
Ex.D7	Report of the police.
Ex.D8	Photograph

No doubt in Ex.D2, there was reference by the Panchayat with regard to possession of plot No.17 with respondent-plaintiff instead of plot No.2 but the fact of the matter is that the appellant-defendant did not seek any claim with regard to plot No.2 by way of filing counter claim. Allotment of plot No.2 in favour of the respondent-plaintiff had been established by mutation, aks-shizra (cloth map) and jamabandi, much less, the report of spot inspection and the same weighed in the mind of the Court in decreeing the suit for possession. Had the appellant-defendant placed on record the relevant material, there would have been an occasion for the Courts below for pondering upon the same and arriving at a conclusion different than the one arrived at.

Keeping in view the aforementioned, I am of the view that the findings arrived at by both the Courts below are based upon the correct appreciation of fact and law, which do not call for interference. No ground for interference is made out, much less, no substantial question of law arises for determination. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 22, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No