

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4933 of 2017(O&M)

Date of Decision: 25.01.2018

Improvement Trust, Sangrur

... Appellant

Versus

Sukhdev Singh & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

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

RAMENDRA JAIN, J.(Oral)

Unsuccessful defendant, after losing before both the Courts below has come up before this Court by way of the instant regular second appeal, challenging the judgment and decree of the First Appellate Court dated 06.04.2017, affirming the judgment and decree of the trial Court dated 15.10.2015, thereby decreeing the suit of the respondents-plaintiff for possession of 11 marlas land comprising khewat/khatauni no.2643/3133, khasra no.174//9/2 situated at Uppli Road, Sangrur(hereinafter referred to as 'the suit property'), according to the jamabandi for the year 2004-2005.

Put pithily, the respondents-plaintiff claiming themselves to be the owner of the suit property filed a suit for possession with alternative prayer of mandatory and permanent injunction against the appellant-defendant alleging that their land measuring 10 kanals 12 marlas was acquired by the appellant-defendant vide notification dated 21.05.1995, excluding the suit property. However, at the time of taking possession, the appellant-defendant also illegally took possession of the suit property from them, which they could not notice as the suit property being a smaller

portion was abutting the acquired land. Immediately on noticing this illegal encroachment by the appellant-defendant, the respondents-plaintiff served a legal notice, but the appellant-defendant did not pay them even a single penny as per the market rate, despite repeated demands and requests, forcing them to file a suit.

The trial Court after holding trial, decreed the suit vide judgment and decree dated 15.10.2015.

Being aggrieved, the appellant-defendant preferred an appeal, but remained unsuccessful as their appeal too was dismissed vide judgment and decree dated 06.04.2017.

Learned counsel for the appellant submits that all the three demarcation reports have wrongly been accepted by the Courts below as the same were not in accordance with law. The respondents-plaintiff did not produce any cogent and convincing evidence in support of their claim qua possession of the suit property.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant-defendant, this Court finds the instant appeal completely devoid of merit for the reasons to follow:-

1. As soon as the respondents-plaintiff pleaded, testified and proved that the the suit property was not acquired and was illegally encroached by the appellant-defendant duly supported by two demarcation reports got done by them and the third one procured by the trial Court during the pendency of the suit, the onus shifted upon the appellant-defendant to prove that it was not in unauthorized or illegal possession of the suit property, rather the same was acquired, which it could prove by simply

production of the award of the Land Acquisition Collector, coupled with the notification under Section 41 of the Punjab Town Improvement Act to non-suit the respondents-plaintiff, which were the most material documents to resolve the dispute.

The aforesaid documents have not been produced deliberately by the appellant-defendant before both the Courts below, which ought to have clinched entire controversy in between the parties in an effective manner. Therefore, an adverse inference is required to be drawn against the appellant-defendant that they with malafide intention want to remain in possession of the suit property illegally and forcibly.

2. No question of law much less substantial arises or argued in this second appeal for consideration.

In view of the above, the instant appeal stands dismissed.

25.01.2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No