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

RSA-528-2017 (O&M)

Date of decision : 03.12.2018

State of Haryana and others

... Appellants

Versus

Savitri Devi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.R. Singla, DAG, Haryana and
Mr. Ajit Bhardwaj, AAG, Haryana
for the appellants.

Mr. Adish Gupta, Advocate
for the respondents-caveators.

AMIT RAWAL, J.

The appellants-defendants/State of Haryana have not been successful in defending the suit for mandatory injunction for grabbing the land of the plaintiffs, as they were dispossessed without any compensation.

The plaintiffs alleged that they purchased the land vide registered sale deeds dated 19.11.2007 and 01.06.2010 of Rect. No.20, Killa No.5(6-5), 6(0-1), kita -2 measuring 6 kanals 6 marlas out of which to the extent of 4 kanals 6 maralas i.e. 2600 sq. yds., situated at Village Harfala. On the basis of the same, mutation was sanctioned. Adjacent to the property, there was a link road which led from Village Seekri to Village Mohla, Tehsil Ballabgarh and passed through Village Harfala. The defendants wanted to connect the link road as a pucca and in this regard, encroached 13 marlas of the land, which was found on the basis of the demarcation report dated 06.04.2010 and 04.12.2012 and the suit was filed

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in the year 30.04.2015. No compensation, in this regard, was ever paid. A legal notice was also sent on 30.12.2013. A writ petition bearing No.22169 of 2014 was filed in this Court, wherein the plaintiffs were relegated to avail the efficacious remedy.

The appellants-defendants opposed the suit by raising numerous objections and disputed the demarcation report. The alleged encroachment was emphatically denied, but the construction of the link road on the land belonging to them was admitted.

The plaintiffs in order to prove their case examined five witnesses and brought on record various documents (Ex.P-1 to Ex.P-14), whereas the defendant examined DW1-I.K. Aggarwal and brought on record Ex.DW1/A i.e. affidavit of DW-1.

The trial Court by observing that khasra No.20//5 measuring 13 marlas of land had been encroached by the defendants with a pucca road, decreed the suit. The appeal preferred before the lower Appellate Court was also met with the same fate.

The present regular second appeal is also accompanied by an application bearing CM No.1144-C of 2017 seeking condonation of delay of 42 days in filing the appeal.

Learned State counsel representing the appellants-defendants on instructions from Ravinder Kumar Sethi, SDO, PWD (B&R), Faridabad, attempted to make an argument beyond the pleadings and the evidence on record. It was submitted that in lieu of land belonging to the respondents-plaintiffs, equal piece of land was given in exchange and entry, in this regard, is yet to be assigned. An attempt was also made to show to the Court a site plan, which is not the part and parcel of the record. However,

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title of the plaintiffs was not dispute. The defendants before the Courts below had an audacity of taking a plea of having acquired the ownership by prescription.

I have heard learned counsel for the appellants-defendants/State of Haryana and of the view that plea of adverse possession at the instance of the Department has heavily been deprecated by Hon'ble the Supreme Court in **State of Haryana V/s Mukesh Kumar and others, 2011 (10) SCC 404.**

This Court confronted the State Counsel as to whether the evidence or the pleadings with regard to the alleged exchange are part and parcel of the record of the trial Court or the lower Appellate Court, the answer was in negative. The aforementioned argument had been raised only on the instructions given to the State Counsel by Mr. Ravinder Kumar Sethi, who is present in Court and alleged that he had joined the office only four months back. Be that as it may, the audacity of the Department in attempting to mislead this Court cannot go unnoticed. I have come across many cases of such nature, where the Haryana Public Works Department (PWD) while erecting the road had not compensated the landowners. It is a settled law that a person, who is the owner of the land, cannot be deprived of the compensation being violation of Article 300-A of the Constitution of India. Such frivolous litigation at the instance of the defendants/Department by opposing the suit instituted should have come to the rescue in redressal of the grievance agitated by the plaintiffs, but the files are not dealt with openness and application of mind. Filing of the present regular second appeal, in my view, is an atrocious attempt on behalf of the State. Even the appeal has been filed beyond the period of limitation.

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In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the regular second appeal is dismissed with costs of ₹25,000/- to be paid to the respondents-plaintiffs from the personal account of Ravinder Kumar Sethi, SDO, PWD (B&R), Faridabad, who is present in Court.

03.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**