

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

RSA No.6136 of 2017

Date of Decision.14.03.2018

Parmanand and others

.....Appellants

Vs

State of Haryana and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Anju Arora, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are in regular second appeal against the concurrent finding of fact whereby the suit for permanent and mandatory injunction qua land bearing khasra No.229//15/1/1(2-0) measuring 2 kanals situated in village Ratia, District Fatehabad, in which plaintiff No.1 Parmanand, plaintiff No.2 Neelam Rani and plaintiff No.3 Gurdeep Singh having 1/15th share each and have constructed shops and the defendants had no concern with regard to the land and also sought restraint order against forcible interference into their possession and demolition with consequential relief of mandatory injunction directing them to return the shops in the same shape on the basis of oral and documentary evidence, had been dismissed by the trial Court and upheld by the lower Appellate Court.

The appellants-plaintiffs instituted the suit on the ground that vide sale deed dated 25.05.1998, Ex.P6, they had purchased the land measuring 8 marlas in respect of khasra No.229//15/1/1 out of 2 kanals 8 marlas. Owing to the ownership of the aforementioned land, they had constructed shops. Regarding the ownership and possession of the land,

view of the compromise arrived at, the vendor of the appellants-plaintiffs was held to be owner of the property i.e. khasra No.229//15/1/1. The action of the respondents-defendants in demolishing the shops without complying with the principles of natural justice in strict manner, gave cause of action to the plaintiffs to institute the suit seeking aforementioned relief.

Upon notice, defendant Nos.1 to 3 appeared and filed written statement taking preliminary objections of maintainability, locus standi, jurisdiction, mis-joinder of necessary parties and suppression of material facts etc. On merits, it was stated that the after obtaining the demarcation report, Tehsildar Ratia after following the due procedure removed the encroachment upon the land bearing khasra No.229/15/2(1-3), 16/1(3-11), 17(3-4) bearing khewat No.918, khatoni No.1199 situated at Ratia, Tehsil Fatehabad. The aforementioned land was provided by the Land Acquisition Collector, Colonization Department Haryana, Chandigarh for development of Mandi. The plaintiffs were greedy persons and in the guise of illegal possession wanted to grab the land of Mandi by raising construction.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to relief of permanent as well as mandatory injunction as prayed for? OPP*
- 2. Whether the suit is not maintainable in the present form? OPD*
- 3. Whether the plaintiffs have not come to the court with clean hand? OPD*
- 4. Whether the suit is bad for non joinder and mis joinder of necessary parties? OPD*

5. *Whether the plaintiffs have no locus standi to file the present suit in its present form? OPD*
6. *Whether the civil court has got no jurisdiction to try and decide the present suit? OPD.*
7. *Whether the suit is bad for want of mandatory notice? OPD*
8. *Relief.”*

In support of their claim, plaintiffs examined PW1 Rameshwar Dass Clerk, PW2 Kewal Krishan, PW3 Sh. C.L. Narang, Advocate, PW4 Balwan Singh Secretary MC Ratia, PW5 Parmanand plaintiff No.1 himself and tendered into evidence Ex.P1 to Ex.P20. On the other hand, defendants examined DW1 Rishikesh Garg, DW2 Kailash Chander Patwari, DW3 Hawa Singh Khobra and tendered into evidence Ex.DW1/A, Ex.DW1/B, Ex.DW3/B to Ex.DW3/H, Ex.DA and Ex.DB.

The trial Court on the basis of aforementioned evidence dismissed the suit and the appeal preferred against the same was also dismissed.

Ms. Anju Arora, learned counsel appearing for the appellants-plaintiffs submitted that the respondents-defendants did not adopt the procedure in accordance with law whereas the SDO (Civil) Ratia had sent a letter to the Secretary of Market Committee vide Sr. No.126 dated 26.04.2010 whereby the appropriate direction was issued to launch proceedings for getting possession from the notorious occupiers. The said letter had been proved on record as Ex.DW3/C, therefore, the department could not have resorted to the procedure except by approaching the Court. The Courts below have wrongly found that the construction had been raised by the appellants on khasra No.229//15/2 whereas it was on 229//15/1/1.

The police help was sought on 24.02.2010 whereas the decision to remove the encroachment was taken on 30.06.2010. The demarcation report was not per se admissible as it was not according to the High Court Rules and Regulations, much less, prepared at the back of the appellants, thus, liable to be rejected. In the earlier suit, it was categorically held that vendor of the appellants-plaintiffs was owner of khasra No.229//15/1/1, possession of which was handed over in pursuance to the aforementioned sale deeds. In other words, out of total land of 29 marlas, land measuring 14 marlas was accepted to be in ownership and possession of Subhash Chander etc. The trial Court did not advert to the documentary evidence *ibid* and the defendants have relied upon the demarcation report only, therefore, there is abdication and perversity while dismissing the suit.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper book and of the view that there is no force and merit in the submissions of Ms. Anju Arora, for, the plaintiffs have to stand on their own legs. It was incumbent upon them to place on record the demarcation report to belie the demarcation report *ibid* vis-a-vis the encroachment. The shops which have been demolished, were, according to the report, erected on Khasra No.229//15/2 and other various khasra numbers for which the plaintiffs had no concern. In my view, the plaintiffs have not been able to establish whether the construction of the shops was on their own land or otherwise. No assistance of the Court was taken to appoint local commissioner from Revenue Department, thus, plaintiffs miserably failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act. Even in the cross-examination, they did not as to how many shops had been raised and whether the shops had been raised on their own land or on

the land of the Government. To a specific question in the cross-examination, it was asked whether for raising the construction any plan was sanctioned or not, the answer was that though they had applied for the sanction but the same was not granted. All these factors weighed in the mind of the Courts below in rejecting the claim of the plaintiffs. The arguments of Ms. Arora have not been able to cut ice to form a different opinion than the one arrived at by the Courts below.

As an upshot of my finding, the judgments and decrees rendered by the Courts below are perfectly legal and justified, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 14, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No