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

RSA No.6255 of 2017 (O&M)

Date of decision: January 15, 2018

Ram Kishan (deceased) through LRs.

.....Appellants

Versus

Gyan Chand and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. P.R. Yadav, Advocate
for the appellants.

RAMENDRA JAIN, J (Oral)

CM -16327-C of 2017

This application under Section 151 CPC for condonation of delay of 469 days in re-filing the appeal is being disposed of with the main appeal.

RSA No.6255 of 2017

The legal heirs of defendant-Ram Kishan have preferred this Regular Second Appeal for modification of the relief granted to them by the Courts below in their counter claim by setting aside the judgment and decree dated 23.01.2013 of the trial Court, Gurgaon and that of the First Appellate Court, Gurgaon dated 27.04.2016.

Put pithily, on receiving property from their father-Gopal Dass, the respondents-plaintiff sold out a plot measuring 220 square yards to deceased-Ram Kishan, father of the appellants-defendant vide registered sale deed bearing Vasika No.13592 dated 04.02.2003 for a consideration of ₹54,000/- comprising Rectangle No.76, Khasra No.19/1

and 19/2 leaving an area measuring 106 square at the spot. Respondents-plaintiff in their suit for permanent injunction, pleaded that Ram Kishan was threatening to occupy the said area illegally & forcibly, despite the fact that it was not sold to him, therefore, he may kindly restrained from doing so. During the pendency of the suit Ram Kishan expired and his legal heirs i.e. the appellants were brought on record.

The suit was contested by the appellants, pleading that in fact a plot measuring 326 square yards was purchased by their predecessor in interest Ram Kishan for a sale consideration of ₹2,05,380/- but the respondents-plaintiff in collusion with the deed writer defrauded him by getting mentioned a lesser area i.e. 220 square yards with wrong dimensions in the sale deed, instead of correct measurement of 326 square yards by taking advantage of his illiteracy. Appellants-defendant had constructed their house over the entire area of 326 square yards being purchased by them.

On completion of pleadings, framing of necessary issues and hearing both the sides, the trial Court while dismissing the suit, partly accepted the counter claim of the appellants-defendant, thereby, restraining the respondents-plaintiff from interfering in their peaceful possession except in due course of law vide judgment and decree dated 23.01.2013.

Being aggrieved, the defendants/counter-claimants preferred an appeal before the First Appellate Court, but remained unsuccessful as their appeal was dismissed vide judgment and decree dated 27.04.2016.

Learned counsel for the appellants contends that both the

Courts below have failed to appreciate that the respondents-plaintiff were regularly seeing the construction of the house of the appellants-defendant over an area of 326 square yards, but never objected to it, which fact proves that they had sold entire plot measuring 326 square yards and not 220 square yards wrongly recited in the sale deed. The silence of the respondents-plaintiff around 2 ½ years in between raising of construction by the appellants over the suit land and filing of the suit by them amounts to their acquiescence that they had sold land measuring 326 square yards. More so, their above conduct for remaining silent for such a long period amounts to estoppel dis-entitling them to file any such suit of permanent injunction.

Both the Courts below have erred in declaring the respondents-plaintiff as owner of the suit land in the absence of any such prayer in their suit for permanent injunction. Both the Courts below have also failed to appreciate that in the sale deed, the respondents-plaintiffs never showed their ownership over the remaining area on any of the four sides of the plot measuring 220 square yards sold by them to the appellants-defendant and therefore, counter claim of the appellants-defendant was liable to be accepted *in toto*.

After having given excess consideration to the submission made by learned counsel for the appellants-defendant, I find the instant appeal completely devoid of merit for the reasons below:-

Registered sale deed Ex.DW-1/C in favour of the father of the appellants finds mention the area measuring 220 square yards which is a public document. Therefore, appellants-defendant cannot be

permitted to go beyond the recital of the aforesaid registered sale deed. Even, according to the measurements given in the site plan Ex.DW-1/C annexed with the sale deed and the dimensions given in the sale deed, the area comes out to be 220 square yards. Hence, from any angle the appellants-defendant cannot claim their ownership over an area beyond 220 square yards.

Raising construction by appellants-defendant over an area into excess purchased by them, illegally does not entitle the appellants-defendant to claim their ownership over the same. At the most, they can be termed as illegal encroacher over the area in excess to the 220 square yards. Since, there is no document of title in favour of the appellants-defendant beyond 220 square yards, therefore, their counter claim, claiming their ownership of the over excess area of 106 square yards has rightly been rejected by both the Courts below.

I have gone through the judgments of both the Courts below and find no illegality in the same. The arguments raised by learned counsel for the appellants-defendants in relation to Section 26 of the Specific Relief Act and estoppel etc. being irrelevant do not require any discussion.

In view of the discussion made above, the appeal is dismissed.

(RAMENDRA JAIN)
JUDGE

January 15, 2018
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Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No