

RSA No. 642 of 2019 (O&M)

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

RSA No. 642 of 2019 (O&M)

Date of Decision: January 30, 2019

Govind Ram and others

..... APPELLANT(s)

Versus

Om Chand @ Om Dutt

..... RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.K. Sharma, Advocate
for the appellants.

Mr. Ashok Kaushik, Advocate
for the caveator/respondent.

LISA GILL, J.

CM No.1467-C of 2019

There is a delay of 25 days in refiling of the appeal.

For the reasons mentioned in the application, duly supported by affidavit of the applicant, as well as arguments addressed, delay of 25 days in refiling of the appeal is condoned.

Application is disposed of.

CM No.1469-C of 2019

The prayer in this application is for impleading legal representatives of appellant/defendant no.2 Tota Ram.

Learned counsel for the caveator does not raise any objection thereto.

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For the reasons mentioned in the application and in view of the specific stand of the learned counsel for the non-applicant/respondent, the application is allowed as prayed for and the legal representatives of appellant/defendant no.2 Tota Ram as mentioned in para 2 of the application are allowed to be brought on record for the purpose of this appeal and subject to just exceptions.

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This appeal has been filed by the appellants-defendants being aggrieved of the concurrent findings rendered by the learned Civil Judge (Senior Division), Hodal vide judgment and decree dated 30.01.2016 as well as by the learned Additional District Judge, Palwal vide judgment and decree dated 10.09.2018. Suit filed by the plaintiff-respondent was decreed.

Brief facts necessary for the adjudication of the case are that the plaintiff/respondent - Om Chand @ Om Dutt filed the suit for possession of the encroached portion/Western-Southern side of the gait of the plaintiff after removing the said encroachment with immediate effect and further sought a decree for permanent injunction restraining the defendants from encroaching upon the said gait or any other part of it in any manner and from raising further construction towards the Eastern-Southern side of the gait. Further, if the defendants succeeded in taking illegal possession of the area during the pendency of the suit, a decree for possession thereof and direction to the defendants to remove the encroachment was sought. It was pleaded that the plaintiff and his brothers namely Sunder Lal, Devi Ram, Hari Shankar and Prem Raj etc. are co-owners in possession of the gait

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comprised in Khewat No. 879 min, Khatoni no.1081, Khasra no. 333, Killa no.2 (1-10), measuring 1 Kanal 10 Marlas, situated within the abadi deh of village Khambi, Distt. Palwal and the defendants are owners in possession of the gait comprised in Khewat No. 876 min, Khatoni no.1078, Khasra no.333, Killa no.7 (1-10), total measuring 1 Kanal 10 Marlas, situated within the abadi deh of village Khambi, District Palwal. It was further pleaded that the gait of the defendants is towards the southern side of the gait of the plaintiff. The defendants knowingly and intentionally encroached upon the Western-Southern side of the gait of the plaintiff by raising construction in the shape of a room and defendants were bent upon raising further construction illegally. Hence, suit was filed.

Defendants contested the suit while denying all the averments made in the plaint. It was pleaded that the houses of the appellants-defendants are in existence over the suit property since 1971-1972 and that property is not a gait, rather the same is underneath houses for the last more than 40 years. It was pleaded that the houses of defendants were constructed in 1971-1972 and the plaintiff or his other co-sharers never objected to the same. It was pleaded that the defendants' possession is peaceful, uninterrupted, continuous over the land and the defendants are raising construction over the said property. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i) Whether the plaintiff is entitled to a decree of possession as prayed for ?OPP.
- ii) Whether plaintiff is entitled to a decree of permanent injunction as prayed for ?OPP

- iii) Whether the suit is not maintainable in the present form? OPD.
- iv) Whether suit is not valued properly for the purposes of Court fee and jurisdiction? OPD
- v) Whether suit is bad for non-joinder of necessary parties? OPD
- vi) Whether the plaintiff has no cause of action to file the present suit? OPD.
- vii) Whether the plaintiff is estopped by his acts, conduct, omission and commission by filing the present suit? OPD
- viii) Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case decreed the suit filed by the plaintiff-respondent while negating the plea of adverse possession etc. raised by the defendants. The defendants were directed to hand over the vacant possession of the encroached portion to the plaintiff within a period of two months. Permanent injunction was granted in their favour.

Appeal filed by the defendants was dismissed by the learned Additional District Judge, Palwal vide judgment dated 10.09.2018. However, it was further decreed that in the alternate, if the defendants or anyone of them pays to the plaintiff, compensation for the encroached land to the extent of 135 square yards @ 5000/- per square yard within a period of 30 days, the decree of possession passed against the defendants shall be deemed to be satisfied. Aggrieved therefrom, present appeal has been filed by the defendants.

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Learned counsel for the appellants-defendants submits that it is proved on record that the possession of the appellants over the land in question was open, hostile and adverse to that of the plaintiff-respondent. In this view of the matter, the suit filed by respondent-plaintiff has been wrongly decreed. It is further submitted that the alternate relief of payment of Rs.5,000/- per square yard in respect to the encroached land is unjustified. Learned counsel for the appellants submits that in the alternate the rate so fixed should be reduced as the Collector's rate in the area is Rs.2,500/- per square yard. It is thus prayed that this appeal be allowed and suit filed by the plaintiff be dismissed throughout.

Learned counsel for the respondent/caveator refutes the averments and prays for dismissal of the appeal. It is submitted that the appellants-defendants in their written statement have taken a specific plea that the value of the land in question is more than Rs.10,000/- per square yard in the area.

I have heard learned counsel for the parties and have gone through the file.

Plaintiff-respondent in this case claimed the relief of possession of the land stated to have been encroached upon by the defendants-appellants and a further prayer for permanent injunction against the defendants from raising any other construction on the suit property. In order to prove the encroachment carried out by the defendants on the land belonging to the plaintiff, reliance has been rightly placed by both the Courts below on the report of the Local Commissioner Ex.PW1/D

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wherefrom it is conclusively proved that the land of the plaintiff in question has been encroached upon by the defendants. PW-1 Ashok Kumar, Halka Girdawar has clearly stated that he had gone twice for the demarcation of the property in question along with PW-2 Bhagat Singh, Patwari and others. Demarcation of the spot was indeed carried out. PW-1 Ashok Kumar stated that he carried out the demarcation with the help of a machine (Total Surveyor Machine). There is nothing on record to show that there is any irregularity or illegality in the said demarcation which was carried out. Ex. PW1/E is the site plan reflecting the position regarding the suit property. There is indeed no factual inconsistency or illegality as could be pointed out by learned counsel for the appellants in the Local Commissioner's report. A perusal of the file reveals that defendant Govind Ram himself stated in his affidavit Ex.DW1/A that in case the demarcation is done fairly and in case there is any area in excess with the defendants, they be allowed to make good the deficiency with the other area adjacent to the plaintiff's land.

It is relevant to note at this stage that the defendants-appellants have taken the plea of adverse possession. Property of the plaintiff is in possession of the defendants. The ingredients of adverse possession have not been proved on the record in this case. It is rightly observed by the learned Additional District Judge, Palwal that the evidence on record does not indicate knowledge of the plaintiff about the alleged encroachment upon his land. Hostile, open, peaceful possession of the land in question by the defendants, adverse to that of the plaintiff is not proved on record.

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It is noticed that the learned Additional District Judge, Palwal has observed that at the time of final arguments on behalf of the parties, statements were recorded separately that relief may be re-framed and defendants may be given an opportunity to pay compensation for the encroached land to the extent of 135 sq. yards @ Rs.5,000/- per sq. yard. The appellants were reluctant to pay the sum of Rs.5,000/- per sq. yard, however, learned Additional District Judge, Palwal directed the alternative relief keeping in view the fact that in the written statement filed on behalf of the appellants it was mentioned that the suit land is valued at Rs.10,000/- per sq. yard. Learned counsel for the appellants is unable to deny that in the written statement filed on behalf of the appellants (attached as Annexure A-2 with this appeal) it is the categoric stand of the defendants/appellants that the market value of the land is more than Rs.10,000/- per sq. yard being a part of the residential area in the village Khambi. It is thus, not open to the defendants in this situation to take a contrary stand at this stage.

Both the learned courts below have rendered concurrent findings of fact against the appellants on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument has been raised.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 30.01.2016 passed by the learned Civil Judge (Senior Division), Hodal as

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well as judgment and decree dated 10.09.2018 passed by the learned Additional District Judge, Palwa, respectively, which calls for any interference by this Court in second appeal. However, the time afforded to the defendants to deposit the amount in question is extended to one month from the date of receipt of certified copy of this decision.

Accordingly, this appeal is dismissed with no order as to costs.

As the appeal is finally decided, no separate orders are required to be passed in any pending applications, if any.

January 30 , 2019.
Sunil

(**LISA GILL**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No