

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

RSA No.507 of 2019 (O&M)

Date of Decision:04.12.2019

Phool Singh

.....Appellant

Versus

Bal Ram through legal representatives

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Anil Kumar Yadav, Advocate
for the applicant-appellant.

LISA GILL, J.

Appellant-plaintiff, has filed this appeal being aggrieved of judgment and decree dated 26.11.2014, passed by the learned Additional Civil Judge (Sr. Division), Rewari, as well as judgment and decree dated 16.12.2017, passed by the learned Additional District Judge, Rewari, whereby suit filed by the appellant-plaintiff, has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for declaration to the effect that he is the exclusive owner in possession of the property as described in the plaint and defendants have no right, title and interest in the same. Defendants are pleaded to have illegally opened a gate, window, mora and projection towards the property of the plaintiff. Consequential relief of mandatory injunction directing the defendants to close the moras, gate, window opened towards the property of the plaintiff, was also sought. It is pleaded that the property in dispute is the ancestral coparcenary property of the plaintiff and

he is using the same for the purpose of '*bara*'. It is pleaded that the ancestors of the plaintiff were the owners in possession of the property in question and after their death, he became owner in possession of the same. It is further pleaded that in order to grab the property of the plaintiff, the defendant being a strong headed person, opened the gate towards the southern side of his property. It is further pleaded that the defendants have illegally constructed projection, moras, windows and gate illegally in his absence, which are liable to be demolished. Plaintiff requested the defendants many times to remove the same, but they did not pay any heed to his requests. Accordingly, the present suit was filed.

Suit was contested by the defendant. Various preliminary objections were raised in the written statement. It is pleaded that the plaintiff is not the owner in possession of the property in dispute. The property in dispute is a '*rasta*' (passage) of '*Abadi Deh*', which falls in Khasra no.21 and the same vests in the Gram Panchayat. It is further pleaded that the Gram Panchayat is the owner of the land in dispute and the plaintiff has not impleaded it as a necessary party in the suit. It is further pleaded that the Tehsildar, Rewari, has prepared a demarcation report regarding the property in dispute vide file no. 564/nishandeshi dated 30.06.2009 and according to that, disputed property is a rasta of the abovesaid khasra number, which vests in Gram Panchayat, Devlawas. It is pleaded that the plaintiff has illegally put his '*khad khudi*' in front of the defendant's house and that too without permission from the Gram Panchayat. It is further pleaded that the plaintiff has given wrong dimensions of his property and the property in dispute is not the ancestral coparcenary property of the plaintiff. Remaining

averments in the plaint, were denied and dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is exclusive owner in possession of a residential plot mentioned in para no.1 of the plaint as alleged?OPP
2. Whether the defendants have opened a gate and window shown in the site plan and also made projection illegally and liable to be removed as alleged?OPP
3. Whether the plaintiff is entitled for decree of mandatory injunction, directing the defendant to close the moras, gate, window opened towards the property of the plaintiff as alleged?OPD
4. Whether the suit of the plaintiff is not maintainable in the present form?OPD
5. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD
6. Whether the plaintiff is estopped by his own act and conduct to file the present suit?OPD
7. Whether the plaintiff has not affixed proper court fees on the plaint?OPD.
8. Whether the suit is bad for non-joinder of necessary party?OPD
9. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances of the case and evidence on record, concluded that the plaintiff was unable to prove his case on the basis of the evidence on record. It is observed that there is no evidence on record to prove the ownership and possession of the plaintiff or his ancestors over the suit property. The site plan produced by the plaintiff, was rejected. The suit was also held bad for non-joinder of the necessary party i.e. Gram Panchayat. Suit of the plaintiff was accordingly dismissed.

Appeal filed by the plaintiff was dismissed by the learned

Additional District Judge, Rewari, vide impugned judgement and decree dated 16.12.2017.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the applicant-appellant vehemently argues that both the learned Courts below have grossly erred in law and on facts in dismissing the suit filed by the plaintiff, who has successfully proved that he is the owner in possession of the property in question. He has been throwing garbage over the suit property and using it as *Gadda Khad*. It is further submitted that the documents sought to be brought on record by way of additional evidence, are necessary for the just and proper adjudication of the case. The said documents were not produced earlier as it is only after the judgement of the learned First Appellate court that the question of there being a passage/Rasta on the suit land arose. It is further contended that the appellant is a proprietor of the village. The land in question, is admittedly, within the '*Abadi Deh*', therefore, there was no requirement of impleadment of the Gram Panchayat as a party. It is thus prayed that the application under order 41 Rule 27 read with Section 151 CPC, be allowed and the appeal be allowed as well. Consequently, suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the record with his assistance.

Appellant-plaintiff has laid the foundation of his case by claiming to be the exclusive owner in possession of the property in dispute. It is pleaded that the property is the ancestral coparcenary property of the

plaintiff and that he has been using the same for the purpose of 'Bara'. The ancestors of the plaintiff are claimed to have been the owners in possession of the suit property. Defendant, is pleaded to be a strong headed person, who had opened gate towards the southern side of his property in order to grab the plaintiff's property. Constructed wall, is stated to have been broken by the defendant that the defendants constructed a projection, window, moras and gate illegal, in the plaintiff's absence.

Per contra, the defendant has taken a stand that the property in dispute is a passage/*rasta* of the Abadi Deh, which falls in khasra no.21 and the same vests in the Gram Panchayat. The Tehsildar, Rewari, is stated to have prepared a demarcation report dated 30.06.2009, regarding the property in dispute, wherein the passage is duly reflected. The disputed property, is clearly shown to be a passage in front of the defendants house, which the plaintiff, without the permission of the Gram Panchayat, has been using for placing his '*khad* 'etc. It is denied that the property in question is the ancestral co-parcenary property of the plaintiff or the plaintiff's ancestors were the owner in possession thereof. The plaintiff chose not to file any replication to this written statement.

Learned counsel for the appellant is unable to deny that there is indeed no evidence on record to substantiate the plaintiff's pleadings. It is rightly observed by the learned trial Court that the plaintiff has not even mentioned the names of his ancestors, who are claimed to be the owners in possession of the property earlier. The plaintiff has not even led any oral evidence in the shape of testimony of any respectable person of the village in this respect, leave alone bring on record any other evidence. There is only a

bald statement of the plaintiff to this effect.

Furthermore, there is no evidence on record to indicate that the wall constructed by the plaintiff was broken or brought down by the defendant. The plaintiff, while testifying as PW-2, has admitted the use of the disputed property for placing his garbage, *khad* etc. It is thus rightly held by the learned Courts below that it can safely be presumed that no construction was raised over this property by the appellant. Both the learned Courts below have rightly rejected the site plan, Ex.PW/B. PW-1-Om Parkash Yadav, Draftsman, has admitted that he has not mentioned the length or width of the house constructed around the property in dispute, neither has he mentioned the width of the passage situated on the northern side of the site plan. The names and addresses of the persons whose houses are adjoining the suit property, are also not in his knowledge. It is a settled position that mere throwing of garbage etc., on the land, is not conclusive proof of possession unless an overt act to exclude others from use and presence is proved. Reference in this regard can gainfully be made to the decision in **Bhan Singh Vs. Tej Singh, 1997 (1) R.C.R (Civil) 46** and **Sukh Pal and another Vs. Gram Panchayat of village Maheshpur and others 2017 (3) PLR 116.**

An application under Order 41 Rule 27 read with Section 151 CPC, has been moved along with this appeal seeking to place on record copy of the Shajra Demarcation of the *Abadi* area, besides, a copy of application dated 12.02.2018, submitted by the appellant to the Tehsildar, Rewari, for conducting demarcation/identification of the land/plot alongwith manure pit in Khasra no.21 with regard to the ownership and possession of the appellant

as well as report dated 13.02.2018, of the Tehsildar, Rewari, to the effect that Khasra no.21 is *Abadi Deh* and in the column of cultivation, it is reflected as 'Maqbuja Abadi Deh'. Appellant also seeks to place on record a pedigree table, Annexure A-3, as well.

It is submitted by learned counsel for the applicant-appellant that these documents are essential for the just adjudication of the case. However, having heard learned counsel for the applicant-appellant, I do not find any merit in the argument and do not find any ground to allow this application.

The application under Order 41 Rule 27 read with Section 151 CPC, reads as under:-

- “1. That the accompanying appeal is being filed in this Hon'ble Court, which is likely to succeed on the grounds taken therein.
2. That the appellant wants to place on record the Annexure A/1 to A/3 as Additional Evidence which are necessary for the final disposal of the appeal.
3. That in case the said documents are not allowed to be taken on record as additional evidence, in the eventually the applicant-appellant shall suffer manifest injury and irreparable loss.

It is, therefore, respectfully prayed that present application may kindly be allowed and Annexure A/1 to A/3 may kindly be taken on record as additional evidence, in the interest of justice and equity.”

Learned counsel for the appellant, is unable to point out any reason, leave alone a justifiable and plausible reason, as to why, the said documents could not have been placed on record i.e., Annexure A-1 and A-3 before the learned trial Court. Annexure A-2, is an application moved by the

appellant before the Tehsildar on 12.02.2018, admittedly submitted after the decision of the learned First Appellate Court on 16.12.2017.

Argument raised by learned counsel for the appellant that the question of there being a passage/rasta on the suit land arose only after the passing of the judgement of the learned First Appellate Court, is clearly devoid of any merit and dehors the record. I have gone through the copy of the written statement filed on behalf of the defendant, as produced by learned counsel for the appellant during the course of hearing. Learned counsel for the appellant is unable to deny that in para no.5 of the preliminary objections of the said written statement, it is specifically mentioned that the disputed property is a *Rasta* of the *Abadi Deh*, which falls in Khasra no.21 and the same vests with the Gram Panchayat. An objection has been taken that the Gram Panchayat has not been impleaded as a party.

There is thus no ground whatsoever for allowing this application, at this stage. Moreover, the application and report of the Tehsildar, Rewari, do not in any manner come to the aid of the appellant in proving his case as is the case with the other documents, as well. Application under Order 41 Rule 27 read with Section 151 CPC for production of additional evidence, is completely devoid of any merit. Application is accordingly dismissed.

Learned counsel for the appellant, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on

record have returned concurrent findings, vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 26.11.2014 and 16.12.2017 passed by the learned Additional Civil Judge (Sr. Division) Rewari and learned Additional District Judge, Rewari, respectively, are upheld.

There is a delay of 268 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in re-filing of this appeal is rendered academic. Application is disposed of accordingly.

Present appeal is, consequently, dismissed with no order as to cost.

04.12.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.