

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

RSA No.4351 of 2003 (O&M)

Date of decision : 23.01.2019

Satish Chand Sharma and others

...Appellants

Versus

Amit Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulbhushan Sharma, Advocate for appellant Nos.1 and 2.

Mr. Shiv Kumar, Advocate for appellant Nos.3 to 5.

Mr. L.N. Verma, Advocate for respondent Nos.1 to 4.

Mr. Adarsh Jain, Advocate for respondent Nos.5 to 9.

Mr. Saurabh Girdhar, AAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

During the pendency of the present appeal, an application under Section 151 of the Code of Civil Procedure was filed to place on record copy of order passed by the Financial Commissioner, Haryana dated 17.03.2004 bearing CM No.8422-C of 2004, which was treated as an application for additional evidence. Application shall be dealt with while giving detailed reasons.

The plaintiffs-residents of Ballabhgarh City have filed the suit seeking injunction against the defendants from taking exclusive possession of the property or raising construction. They claimed that major part of the

property is part of already constructed road and remaining area is also part thereof, although carpeting has not been done.

The defendants denied that the property is a passage or a part of road. It has been pleaded that Sir Harinder Singh Brar, Ex-Ruler of State of Faridkot, was owner of the property who allowed PWD Department to construct a road on part of the land, however, by mistake the entire land was recorded in the revenue record as gair mumkin road. Sir Harinder Singh Brar filed Civil Suit No.478 of 1982 which was decreed on 05.11.1984 declaring that only the land which forms part of the road vests with the Government but remaining part is owned by Sir Harinder Singh Brar. Appeal against the aforesaid judgment and decree was dismissed on 09.12.1985. It is thereafter that contesting defendants have purchased the property through various sale deeds executed by the aforesaid Ex-Ruler or his successor-in-interest vide sale deeds dated 16.08.1989, 21.08.1989 and 31.08.1989.

On appreciation of the evidence, both the Courts dismissed the suit.

As noticed above, there is an application for additional evidence i.e. CM No.8422-C of 2004. Through this application, in additional evidence, order passed by the Financial Commissioner, Haryana while deciding revision petitions arising from the proceedings under the Ceiling Laws, is sought to be produced. The Financial Commissioner has held that since the land in dispute is part of a road, therefore, it is not the agricultural land and hence, cannot be taken into consideration for the purpose of calculating the agriculture land under the Ceiling Laws.

Learned counsel for the appellants wants to read such order in a manner that land under the road has been finally determined and, therefore, the defendants have lost right, title or interest in the property.

This Court has considered the submission, however, finds no substance therein.

The proceedings under the Ceiling Laws are only to determine what was the agriculture land holding of big landowner and how much land was beyond the ceiling limits. Ceiling Laws as applicable to the State of Haryana are only concerning agricultural land. The observations made by the Financial Commissioner have to be read in the context in which these have been made. The observations only mean that for the purpose of calculating surplus area of the agricultural land, such land is not to be taken into consideration.

Learned counsel for the appellants has submitted while referring to the contention raised by the counsel for the defendants at the time of the arguments that the possession is with the Government and, therefore, the suit is entitled to be decreed.

It may be noted that the contention of learned counsel at the time of arguments cannot be taken as an admission to decree the suit. The suit is to be decided on the basis of the pleadings and evidence of the parties.

Learned counsel for the appellants did not draw attention of the Court to any admission of the defendants either in the pleadings or in evidence.

Learned counsel for the appellants further argued that the

decree which was passed on 05.11.1984 is not binding the rights of his clients as they were not party to the aforesaid suit.

The argument is wholly mis-conceived. The plaintiffs are not claiming any right, title or interest in the property. They claimed that they are members of general public trying to protect the property which is part of road. Once the judgment has been passed which has become final, the plaintiffs cannot be heard to say that the property is part of the road, since in the present suit only prayer for injunction has been made.

Still further, the Courts have found that Local Commissioner has reported that initially the entire land was comprised in khasra No.158 and thereafter the property under the road and the property which is not part of the road was separated. Khasra No.158 was assigned for the area which is under road whereas the property which was not part of the road was assigned khasra No.158/2.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No