

In the High Court for the States of Punjab and Haryana at Chandigarh

RSA No. 2576 of 1988 (O&M)
Date of Decision: April 09, 2019

Brij Mohan Jag Mohan

... Appellant

Versus

Ram Sarup

.. Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. O.P. Goyal, Sr. Advocate with
Mr. Piyush Aggarwal and Mr. Vikas Singh, Advocates,
for the appellant.

None for the respondent

Amit Rawal, J. (Oral)

Present regular second appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of the respondent-plaintiff for possession dismissed by the trial Court, has been decreed.

Respondent-plaintiff instituted the suit for possession of site shown as BCEF by demolition the wall EF being part of plot of the plaintiff marked ABCD as shown in the site plan being 8/57 share of land measuring 8 marlas out of land measuring 2 kanals 17 marlas purchased vide sale deed dated 04.11.1971 from one Om Parkash. Said Om Parkash carved out different plots of his land for the purpose of sale and sold plot measuring 8 marlas being 8/57 share of the afore-mentioned land with definite boundaries and measurements to the plaintiff vide sale deed *ibid*. The length from East to West was 90 feet and its width from North to South was 24

feet. Later on, Om Parkash sold the plot lying to the south of the plot of the plaintiff to the defendant, who illegally encroached upon 6 feet wide in width portion and 90 feet long portion of the plot by constructing a wall at point EF.

Defendant contested the suit and alleged that himself to be in possession over the plot as per sale deed executed by Om Parkash on 24.10.1975 and was handed over the possession to the defendant by the vendor. The measurement of the property had already been taken on many occasions.

The trial Court, on the pleadings of the parties, framed the following issues:-

- “1. Whether the plaintiff is entitled to the possession of the site shown as BCEF by demolition of wall EF as alleged in the plaint? OPP*
- 2. Whether this Court has got no jurisdiction to entertain and try this suit? OPD*
- 3. Relief.”*

In support of his case, respondent-plaintiff examined three witnesses, i.e. Rattan Kumar, PW1, Ram Sarup, Office Kanungo PW2 and plaintiff himself as PW3 and placed on record the sale deed (Ex.P1), site plan (Ex.P2), postal receipt (Ex.P3), Copy of notice (Ex.P4) and copy of jamabandi for the year 1981-82 (Ex.P5). On the other hand, defendant examined two witnesses, i.e., Prabh Dayal DW1 and Jai Ram DW2 and placed on record sale deed (Ex.D1).

The trial Court, on the basis of the evidence brought on record, held that in the sale deed, the dimensions in the site plan (Ex.P2) were not mentioned and the Local Commissioner withheld the report almost for three

months and dismissed the suit, but the Lower Appellate Court in appeal decreed the suit.

Mr. O.P. Goyal, Senior Advocate, assisted by Mr. Piyush Aggarwal and Mr. Vikas Singh, learned counsel, appearing on behalf of the appellant, submitted that the judgment and decree of the Lower Appellate Court being the last court of fact and law ought not to have reversed the well reasoned finding in a suit for possession. In a suit for possession, which was on the basis of title plaintiff has to prove the same by way of direct and cogent evidence. The dimensions in the site plan (Ex.P2) were not in tandem with the sale deed. The sale deed did not mention 90'x24', nor any site plan was attached. The site plan prepared by draftsman, could not be tallied with the contents of the sale deed. In other words, the plaintiff miserably failed to discharge the onus.

There is no representation on behalf of the respondent despite service. The appeal is of the year 1988. Accordingly, the same is decided on merits.

This Court vide order dated 08.11.1988 while admitting the appeal, stayed the operation of the impugned decree. Order dated 08.11.1988 reads as under:-

“Admitted.

Operation of the impugned decree is stayed.”

I have heard learned counsel for the appellant, appraised the paper-book, records of the Courts below and of the view that following Substantial Question of Law arise for determination:-

1. Whether the judgment and decree of the Lower Appellate Court tantamounts of misreading to the contents of the sale deed

dated 04.11.1971 is perverse?

The sale deed dated 04.11.1971 only mentions the Market Committee with no dimensions towards east and west or 90'x24' as alleged for the first time in the suit by relying upon the site plan. The draftsman of the site plan did not prove on record to establish the portion, whereas the defendant had purchased the property by way of sale deed dated 24.10.1975. The vendor of both the parties was one Om Parkash. In other words, the parties would have become co-sharer. Be that as it may, the plaintiff, in my view, as well as the evidence brought on record, failed to establish and connect the alleged encroachment by giving description of his plot as 90'x24' to include 8 marlas of land. The Lower Appellate Court did not mention the fact that the Local Commissioner after preparing the site plan kept silent for submitting his report for almost three months. The identity of the property vis-a-vis the site plan and sale deed remained mystery. In such circumstances, the suit for possession ought not to have been decreed. Judgment and decree of the Lower Appellate Court suffers from illegality and perversity.

For the reasons afore-mentioned, the Substantial Question of Law is answered in favour of the appellant-defendant and against the respondent-plaintiff. Judgment and decree of the Lower Appellate Court is set aside and that of the trial Court is restored.

Accordingly, appeal stands allowed.

April 09, 2019

vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No