

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 1757 of 1997

Date of Decision: July 2, 2019.

Ram Narain and another

..... APPELLANT (s)

Versus

Jodha Ram and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Kulvir Narwal, Advocate
for the appellants.

Mr. Hemen Aggarwal, Advocate
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellants, who were arrayed as defendants No.1 and 4 before the learned trial court, have preferred this appeal being aggrieved of judgments and decrees dated 16.02.1996 and 04.04.1997 passed by the learned Additional Civil Judge, Rohtak and the learned Additional District Judge, Rohtak, respectively.

Brief facts of the case necessary for the adjudication of the matter are that, a suit for permanent injunction was preferred by respondent No.1 – Jodha Ram (plaintiff) for restraining the present appellants as well as other defendants from interfering in his peaceful possession of the plot as detailed in the plaint.

Plaintiff pleaded that he was owner in possession of the plot in question which was allotted to him at the time of consolidation of land holdings. Suit property is stated to be situated between the Lal Dora and circular road. The defendants being influential persons, threatened to dispossess the plaintiff forcibly and illegally. Demarcation of the plot was conducted by the Local Commissioner appointed by the Naib Tehsildar. Despite requests, the defendants were not desisting from their illegal acts. Hence, the suit was filed.

Defendant resisted the suit. Joint written statement was filed by the defendants controverting the allegations of the plaintiff. It is pleaded that the site-plan tendered with the plaint is incorrect. Suit property was, in fact, allotted to the defendants, who are owners in possession of the same for the last more than 40 years. Plaintiff was neither the owner nor in possession of the suit property. Defendants further claimed to have raised construction on the plot and were using the suit property for tethering the cattle etc. Report of the Naib Tehsildar was stated to be incorrect. Various preliminary objections were raised as well. Dismissal of the suit was prayed.

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

1. Whether the plaintiff is owner in possession of the plot in dispute, as alleged? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of parties? OPD
5. Whether the defendants are entitled to special costs u/s 35-A

CPC? OPD

6. Whether this court has no jurisdiction to entertain the matter in dispute? OPD
7. Whether no cause of action arose in favour of the plaintiff as alleged? OPD
8. Relief.

Both the parties led evidence in order to substantiate their claims.

Learned trial court while relying upon the demarcation report, which was admitted by DW2 Jagdish i.e., one of the defendants, concluded that plaintiff was able to prove his possession over the suit property. Suit for permanent injunction was decreed. The defendants were restrained from dispossessing the plaintiff from the suit property except in due course of law. Appeal filed by the present appellants alongwith DW2 Jagdish was dismissed by the learned Additional District Judge, Rohtak vide judgment and decree dated 04.04.1997.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants submits that both the learned courts below have grossly erred in decreeing the suit for permanent injunction filed by the plaintiff. It is submitted that reliance has been wrongly placed on the demarcation report, which is not even proved in accordance with law. The same is a marked document. Furthermore, demarcation report (Mark 'A') does not prove the possession of the plaintiff. It is further argued that this report was submitted on an application by the plaintiff to which the present appellants/defendants were not a party. The plaintiff has not even appended his signatures on the said demarcation report. The said report, thus cannot be relied upon. The plaintiff has miserably failed to discharge the onus upon him to prove

his case. It is further submitted that document (Ex.RA) showing exchange of the land with the Gram Panchayat has not been adverted to and PW1 Jodha Ram has admitted that the land belongs to the Gram Panchayat. Therefore, the suit filed by the plaintiff could not have been decreed. He is not proved to be the owner of the land in question. The following substantial questions of law, it is submitted, arise for consideration in this appeal:-

1. Whether any reliance could have been placed on the demarcation report (Mark 'A'), which has not been proved in accordance with law?
2. Whether resolution dated 04.01.1993 (Ex.RA) has been wrongly ignored by the learned courts below?
3. Whether the learned courts below have returned illegal, infirm and perverse findings?

It is thus submitted that the appeal be allowed and consequently, suit filed by the plaintiff be dismissed throughout.

Learned counsel for the respondents, per contra, submits that there is no question of ignoring the document, Mark-A, as it was specifically admitted. Reference is made to the cross-examination of DW2 Jagdish, who has admitted his signatures on the report of Local Commissioner dated 21.09.1987. Therefore, it is submitted that a document which stands admitted need not be proved as has been agitated by learned counsel for the appellants. Moreover, resolution dated 04.01.1993 (Ex.RA) was passed by the Gram Panchayat after the finalization of the suit in question. Furthermore, there is no evidence on record to show that possession of the property in question was ever transferred by the plaintiff to the defendants. It is thus prayed that the appeal filed by defendants No.1 to 4 be dismissed.

I have heard learned counsel for the parties and have gone through the record with their assistance.

At the outset, it is to be noted that the plaintiff/respondent No.1 has filed a suit for permanent injunction seeking to protect his possession over the suit property, therefore, argument raised by learned counsel for the appellants that ownership of the plaintiff over the suit property not being proved, should by itself entail dismissal of plaintiff's suit, is devoid of any merit. The question of the plaintiff's ownership of the suit property or his title to the same is not the subject matter of the lis in the present case. It is the question of possession of the plaintiff being proved on record. Admittedly the plaintiff has relied upon the demarcation report (Mark 'A'). It was vehemently argued by learned counsel for the appellants that the demarcation report has not been proved on record. However, he is unable to deny that DW2 Jagdish in his cross-examination has specifically admitted the said report. He has also admitted his signatures on the said report. There is no dispute with the contention raised by learned counsel for the appellant that mere exhibition or marking of a document without the same not being proved on record is not sufficient. However, in the present case the document in question stands admitted by one of the defendants, who had even preferred the first appeal in the matter. Once the document is categorically admitted, it cannot be said that the demarcation report (Mark 'A') cannot be relied upon. Possession of the plaintiff over the suit property is thus clearly proved by the evidence on record.

It is relevant to note that PW3 Har Bhagwan Dass, who had prepared the report Mark 'A' was duly examined by the plaintiff. He was also subjected to cross-examination by the defendants. PW3 Har Bhagwan Dass specifically

deposed regarding preparation of the said demarcation report and possession of the plaintiff over the suit property. The defendants were not able to extract anything useful in their favour from the cross-examination of PW3 Har Bhagwan Dass. The defendants, on the other hand, relied upon resolution dated 04.01.1993 (Ex.RA) to submit that the land in question was allotted to the defendants. I have perused Ex.RA i.e., resolution dated 04.01.1993 passed by the Gram Panchayat. DW3 Ram Parshad, the Sarpanch, has been examined in this respect. He has merely brought the relevant record before the learned trial court. In his cross-examination he stated that he was not the Sarpanch at the time when the said resolution was passed. He could not tell whether the said resolution was ever sent to the Director or any sanction was received. Apart from the fact that this resolution was passed on 04.01.1993 i.e., during the pendency of the suit, there is indeed no evidence on record to show that possession of the suit property was ever handed over by the Gram Panchayat to the defendants.

Therefore, both the learned courts below have rightly concluded that the plaintiff is entitled to the relief of permanent injunction for protecting his possession over the suit property and defendants were rightly restrained from forcibly or illegally dispossessing the plaintiff, except in accordance with law. The questions of law as framed are thus answered in favour of the plaintiff/respondent No.1 and against the appellants.

Both the learned courts below have rendered well-reasoned and logical judgments on a proper appreciation of the evidence on record, which does not call for any interference by this Court.

Keeping in view the facts and circumstances as discussed above, I do

not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 16.02.1996 and 04.04.1997 passed by the learned Additional Civil Judge, Rohtak and the learned Additional District Judge, Rohtak, respectively, which may warrant any interference by this Court.

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

July 2 , 2019.
'om'

(LISA GILL)
JUDGE

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