

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

RSA-3148-2004(O&M)

Date of decision:-21.5.2019

Naranjan Singh through his LR's and another

...Appellants

Versus

Ranbir Suman and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vijay Saini, Advocate for
Mr.G.S. Nagra, Advocate for the appellants.

Mr.Nitin Sharma, Advocate for
Mr.Ramesh Sharma, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Naranjan Singh son of Sohan Singh son of Sant Singh, resident of village Bhagatpur, Tehsil & District Kapurthala through his special attorney Smt.Gurbax Kaur as well as Mohinder Kaur widow of Tehal Singh, resident of village Nartha Kowindian Da, Tehsil Zira, District Firozepur had brought a suit against the defendants Ranbir Suman, Kapoor Singh, Salamat Ali (since dead) represented by his LR's, seeking possession of

land measuring 11 ' x 33' shown as red in the site plan attached with the plaint from the eastern side of the house of plaintiffs and land measuring 11' x 33' shown with red lines on the western side of the house of plaintiffs by removing all sorts of construction out of the land bearing khewat/khatauni No.348/810 bearing khasra No.102/34/0-6 as per jamabandi for the year 1996-97 and the house is bounded as under:

East : Taur of Ranbir Suman
West : House of Kapoor Singh and Salman Ali
North : Gali
South : House of Sewa Singh

According to the plaintiffs, they are owners of the sites in dispute; that defendant No.2 had constructed a room/kotha on the western side and encroached upon the area measuring about 11 ' x 33' from the western side of the house of the plaintiffs about two years before filing of the suit in absence of the plaintiffs and had handed over possession to defendant No.3; that defendant No.1 had encroached upon the portion measuring 11' x 33' of the house of plaintiffs about two years earlier to filing of the suit in absence of plaintiffs in collusion with each other; that the houses of plaintiffs are within the abadi of village; that there are streets on the eastern and western sides of the site in dispute; that when the plaintiffs took the demarcation, they came to know about the encroachment of the defendants; that they asked the defendants to hand over the vacant possession of the portion of the house after removal of the encroachment but they put off the matter on one pretext or the other and ultimately refused to do so, about a week before filing of the suit, giving

rise to a cause of action to the plaintiffs to file the suit.

On getting notice, defendants No.1 to 3 put in appearance through counsel and filed a joint written statement taking various legal objections and on merits contending that even the answering defendants were in possession, they had become owners by efflux of time since possession of the defendants had matured by ownership by adverse possession as the answering defendants had been in possession for more than 30 years. Nevertheless the defendants submitted that the plaintiffs had no concern with the property in dispute; that the demarcation carried out was not correct and the property in dispute had been shown to be in possession of the defendants; that as a matter of fact this property belongs to defendants and the plaintiffs have no concern therewith. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement, whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

- 1) Whether the plaintiffs are owners of the suit site more fully described in the cause title of the plaint? OPP.
- 2) Whether the defendants have encroached upon the suit and have raised illegal construction thereon? OPP
- 3) Whether the defendants have become owners of the suit site by adverse possession? OPP.
- 4) Whether the plaintiffs are entitled for recovery of possession of the suit site? OPP.
- 5) Relief.

The following additional issues were framed on 7.1.2002 as under:-

- 1) Whether the LR's of defendant No.3 Balkish are owners in

possession of the suit land on the basis of adoption and Will dated 15.1.99? OPD.

2) Whether the will dated 15.1.99 is forged and fabricated one?OPP.

It is pertinent to mention here that both the abovesaid issues had been again numbered as issues No.1 and 2 inadvertently. However, they were ordered to be read as issues No.1-A and 2-A.

In order to prove their case, the plaintiff No.1 Naranjan Singh had got his statement recorded as PW3 besides examining Sh.Gurdip Pal Verma as PW1 and Sh.Mohan Singh, Sadar Kanungo as PW2.

On the other hand, the defendants had examined Sh.Ramesh Kumar as DW1, Sh.Mewa Singh, Patwari as DW2, Sh.Gian Chand, Retd. Kanungo as DW3, Sh.Ranbir Suman as DW4, Sh.Jagir Singh as DW5, Bibi Anayat as DW6, Sh.Karam Singh as DW7 and Smt.Balkish as DW8.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiffs with costs. This was so done vide judgment and decree dated 18.7.2003.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Kapurthala, which was assigned to Additional District Judge, Kapurthala, who vide judgment and decree dated 3.6.2004 dismissed the appeal.

Dissatisfied by the judgments and decrees passed by the Courts below, the plaintiffs have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside

and the suit filed by them be decreed.

Notice of the appeal was issued to the respondents and they have appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

Both the courts below on analysis of the evidence produced by the parties in light of the factual and legal position, have come to the conclusion that no encroachment had been made on any part of the property of the plaintiffs by the defendants. The trial Court while dealing with the aspect as to whether defendants had encroached upon any part of the property belonging to plaintiffs has referred to testimony of PW2 Sh.Mohan Singh, Sadar Kanungo, who had proved demarcation report Ex.P1 stating that Pucca Thada was taken as a phirni/passage of the village, which was left by the Consolidation Department but then in his -examination, he admitted that the passage was not at its proper place nor he had demarcated the khasra No.35 belonging to the defendants. Therefore, under such circumstances, his report could not be accepted, as such and the conclusion drawn that encroachment had been made by defendants to the extent of 11' x 33' both from its eastern and western sides is not acceptable. The trial Court has taken note of the fact that the plaintiffs themselves had raised construction earlier to that of the defendants and if the disputed sites belonged to them, they would definitely have left windows and doors towards those sites but it was not so done, rather it appears in the eastern and western wall of the house of the plaintiffs, which is ultimate boundary of khasra No.102/34. The trial

Court had rightly observed that if any parts is found less then it does not mean that the same had been encroached by defendants. Moreover, the Local Commissioner had admitted that portion in possession of defendant No.1 was also found to be less. Learned trial Court has further referred to admission made by plaintiff Naranjan Singh in his cross-examination that the area on which the defendants had constructed their houses was allowed to them during the consolidation proceedings. Under the circumstances, the trial Court has discarded the version of the defendants that they had become owners by way of adverse possession. As such the relief claimed by the plaintiffs was declined to them.

Coming to the observation made by First Appellate Court , it has also observed that PW2 Mohan Singh, Sadar Kanungo had not shown any encroachment in the street in the area of any of the party. He had further admitted that area of Naranjan Singh, which came in the street had not been given by him to Naranjan Singh and as per record area of Kapur Singh is complete. The witness had further conceded that area of Ranbir Suman was found less at the spot and the same had already come under the street. The witness had further admitted that the property in dispute was got demarcated and not khasra No.35 belonging to defendants. Therefore, it could not be concluded that the defendants had made encroachment out of khasra No.102/34. The First Appellate Court has also agreed with the findings of fact recorded by the trial Court.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned

judgments passed by the Courts below.

The appeal stands dismissed accordingly.

21.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No