

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

RSA No. 2575 of 2019 (O&M)

Date of decision : September 10, 2019

Dhani Ram

.....Appellant

Versus

Arjun Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sachin Mittal, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff has filed this appeal challenging judgment and decree dated 09.10.2015 passed by the learned Civil Judge (Junior Division), Gurgaon whereby his suit for permanent and mandatory injunction has been dismissed, as well as judgment and decree dated 06.10.2017 passed by the learned Additional District Judge, Gurugram dismissing his appeal.

Appellant – plaintiff pleaded that he is the owner in possession of an ancestral residential house-cum-Gitwar as reflected in the site plan attached with the plaint. It is pleaded that the plaintiff's father Ram Kumar had constructed a wall (kacha wall) around his gitwar and thereafter the plaintiff had raised a pucca wall on the portion as marked in the site plan after it had collapsed due to heavy rain. Defendant is pleaded to be a powerful and influential person, who intended to grab the gitwar belonging to the plaintiff and that the defendant wanted to open his doors and windows in the wall as described. The defendant, his son and some unruly elements forcibly trespassed onto the suit property on 16.03.2011 and demolished the

wall marked as AB in the site plan and they also closed the gate near point 'C'. Defendant thereafter is stated to have raised construction in the form of a tin shed and a wall as reflected in the site plan. The suit was, thus, filed for restraining the defendant from taking forcible, illegal possession of the suit property and for a direction to remove the illegal construction raised by the defendant as well as to vacate the suit property marked as ABCL in the site plan.

The suit was resisted by the defendant. While taking various preliminary objections, defendant denied the ownership of the plaintiff over the suit property as well as the disputed portion marked in the site plan. Site plan was pleaded to be incorrect. Property in dispute was claimed to be owned and possessed by the defendant and his family members. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to a decree for permanent injunction and mandatory injunction as prayed for on the grounds taken in the plaint?OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD.
4. Whether the plaintiff is estopped from filing the present suit by their own acts and conduct?OPD
5. Whether the suit has not been properly valued for purposes of court fee and jurisdiction?OPD
6. Relief.

Learned trial Court on considering the facts and circumstances

of the case, concluded that the plaintiff failed to prove his case on the basis of the evidence on record and dismissed the suit. It is held that the plaintiff had taken a stand contradictory to the site plan and that the Local Commissioner's report proved that the defendant had not encroached upon any portion of the suit property. Appeal filed by the present plaintiff - appellant was also dismissed by the learned Additional District Judge, Gurugram vide judgment dated 06.10.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant argues that the defendant encroached upon the gitwar owned by the plaintiff, raised a tin shed over the property and broke down the wall constructed by the plaintiff. Amendment of the suit was sought as construction was raised subsequent to the filing of the suit. It is submitted that as per the evidence on record the case of the plaintiff is duly established, but both the learned courts below have grossly erred in dismissing the suit filed by the present appellant. No reliance should be placed on the report of the Local Commissioner. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 09.10.2015 passed by the learned Civil Judge (Junior Division), Gurgaon as well as judgment and decree dated 06.10.2017 passed by the learned Additional District Judge, Gurugram be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file with his able assistance.

Learned counsel for the appellant is unable to deny that the stand taken by the plaintiff is indeed contrary. It is pleaded in the plaint that the plaintiff is the owner of the suit property, which includes the gitwar used

by the plaintiff for his personal purposes since the time of his forefathers. Plaintiff placed reliance on judgement and decree dated 05.05.1979 wherein the suit property was transferred to Ram Kumar - father of the plaintiff. Site plan (Ex.P2) is a part of the record in the said civil suit. Thereafter, the suit property was transferred by Ram Kumar in favour of the plaintiff - appellant Dhani Ram vide judgment dated 19.11.1993. It is admitted by the plaintiff - Dhani Ram that he got the suit property by way of the said decree and that the property depicted in the site plan (Ex.P2/A) is the same property, which he got by way of decree dated 19.11.1993. Admittedly, site plan (Ex. PW2/A) and the site plans Ex.P2 and Ex.P8 are different. Detail of the differences is clearly delineated by the learned trial Court in judgment and decree dated 09.10.2015.

It is further to be noted that a Local Commissioner was appointed in this matter on an application moved by the plaintiff – appellant himself. Local Commissioner has specifically reported that the defendant was not found to have encroached upon any portion of the property belonging to the plaintiff. Local Commissioner's report was prepared in the presence of both the parties to the suit though the plaintiff refused to sign the report. No objection was filed against the said report and neither was the Local Commissioner examined. It has been rightly held by the learned trial Court that the evidence on record proves that the plaintiff was enjoying the suit property received by him by way of Civil Court decree dated 19.11.1993 and that no construction had been raised and neither any encroachment carried out on this property by the defendant – respondent. Appellant – plaintiff has further admitted his signatures on Ex.D9 addressed to the concerned SHO wherein it is stated that the matter stood

compromised between the parties, though it is sought to be explained by the plaintiff that signatures on the application as well as compromise were obtained forcibly from him. The evidence on record does not substantiate such a plea. Complaint dated 25.02.2011 (Ex.D8) is on record in respect to the alleged incident of 25.02.2011 when the defendant alongwith other persons is alleged to have entered the suit property. It is observed by the learned trial Court that though the plaintiff in the plaint has stated that it is on 15.03.2011 that the defendant alongwith his son and unruly elements demolished the disputed wall and encroached upon the plaintiff's property, admittedly no complaint in respect to incident dated 15.03.2011 was lodged by the plaintiff.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 09.10.2015 passed by the learned Civil Judge (Junior Division), Gurgaon as well as judgment and decree dated 06.10.2017, passed by the learned Additional District Judge, Gurugram which calls for any interference by this Court in second appeal.

There is a delay of 490 days in filing of RSA No. 2575 of 2019. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is disposed of, accordingly.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

September 10, 2019
rts

(Lisa Gill)
Judge

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