

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

R.S.A. No. 3336-2019

Date of decision:- 01.08.2019

Suresh

...Appellant

Versus

Dharam Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rajender Chhokar, Advocate
for the appellant.

RITU BAHRI J. (Oral)

The present appeal is directed against concurrent find of facts recorded by both the Courts below whereby suit filed by plaintiff/respondent for permanent injunction restraining the defendant/appellant from dispossessing and interfering in the peaceful possession of the plaintiff/respondent, has been decreed

The afore-mentioned suit had been filed by plaintiff Suresh on the averments that he was in possession of a plot/Gher, boundaries, dimensions and area of which were mentioned in detail in the head note of the plaint and which was situated within Lal Dora of village Haldana, Tehsil Samalkha, District Panipat and was also shown with letters ABCD in red colour in the site plan annexed with the plaint (hereinafter to be referred as 'the disputed property') since the time of his forefathers. He had filled up the earth over this plot and had raised construction of one room and one toilet. Trees of Neem, Shehtut and Jamun were planted over this plot by the plaintiff. He had spent huge amount of (Manisha Batra) District Judge, Panipat. 17.5.2019. -3- Suresh Vs Dharam Singh money on the disputed

property and was using the same without any interruption for the last many years. It was alleged that now the defendant had developed an evil eye over the disputed property and was trying to dispossess the plaintiff from the same and also tried to take the possession of this property in illegal manner by applying force. The plaintiff requested him not to do so but in vain. Therefore, he filed this suit for permanent injunction thereby restraining the defendant from dispossessing him and interfering in his peaceful possession over the disputed property.

Upon notice, defendant/appellant appeared and filed his written statement raising preliminary objections that the suit of the plaintiff/respondent is not maintainable. The plaintiff has no locus standi to file the present suit. On merits, it was submitted that the plaintiff was neither owner nor in possession of the disputed property and in fact, the defendant was owner in possession of the same and plaintiff had no concern with the same. The defendant (Manisha Batra) District Judge, Panipat. 17.5.2019. -4- Suresh Vs Dharam Singh owned and possessed this property since the time of his father Sh. Chandan Singh, who had raised construction of a Kacha Kotha and boundary wall over the disputed property in the year 1965. After his death, the defendant himself was occupying the same as absolute owner. After the death of his father in the year 1995, his mother Smt. Angoori Devi had been given construction material under the scheme of Indra Avas Yojna initiated by the Government for widows and construction was raised over this property in the year 1998-99 by the defendant and his mother by raising construction of Pakka house, boundary wall and toilet. All the remaining averments were controverted and dismissal of the suit had been prayed.

Plaintiff had filed the replication controverting the pleas taken in the written statement and re-asserting those of the plaint. From pleadings of the parties, following issues were framed:

- 1. Whether the plaintiff is entitled to the reliefs (Manisha Batra) District Judge, Panipat. 17.5.2019. -5- Suresh Vs Dharam Singh as prayed for? OPP*
- 2. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 3. Whether plaintiff has suppressed true and material facts from the Court? OPD*
- 4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 5. Whether the present suit is not maintainable? OPD.*
- 6. Relief.”*

Heard learned counsel for the appellant.

A bare perusal of the judgments passed by both the Courts shows that it was proved on record that the plaintiff/respondent was in possession of the disputed plot and not the appellant/defendant. As far as the nature of possession of the respond over this plot is concerned, in the plaint no specific submission had been made about that. It was proved that the respondent is in possession of the disputed plot as P.W.1 respondent himself stated that he was in continuous possession of the disputed property since 1973. P.W.2 Bhulan stated that the plot/ghar had been allotted to the plaintiff at the time of partition of Abadi Deh of the village. This witness also stated that the articles of plaintiff were lying over this property and he had raised construction of a room, a toilet etc over the same. P.W.3 Kamalram and P.W.4 Amit Kumar also deposed that the disputed property was in possession of the respondent and the same was levelled by filling earth by the respondent. However, it was proved that none of the parties are

owner of the disputed property.

Accordingly, the impugned judgment passed by both the Courts below decreeing the suit of respondent does not require any interference by this Court, as it is well settled proposition of law that a person in established possession of a property even by way of encroachment is entitled to protect the same against all except the true owner. The appellant failed to prove that he or his father were lawful owners of the disputed property at any point of time.

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed.

01.08.2019

G Arora

(***RITU BAHRI***)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No