IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4805-2011(O&M)
Date of decision:-1.8.2019

Smt.Ginna Devi

...Appellant

Versus

Ex.Sub Sawan Ram Gupta

...Respondent

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

Argued by: Mr.Raj Kumar Rana, Advocate
for the appellant.

Mr.Avnish Mittal, Advocate
for the respondent.

****

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Smt.Ginna Devi wife of Sh.Hari Singh, daughter of Sh.Kurdia, resident of House No.2, Pooja Vihar, Industrial Area, Ambala Cantt. had brought a suit against defendant – Ex Sub Sawan Ram, resident of that very area craving for grant of mandatory injunction in the form of issuing a direction to such defendant to hand over the vacant possession of piece of land measuring 157 square yards fully detailed and described in head-note of the plaint and depicted in the site - plan attached therewith, comprised in Khasra No.1/21/1 Khewat Khatoni No.87/131, Hadbast No.128 situated at village Salarheri, Tehsil and District Ambala, now known as Pooja Vihar, Industrial Area, Ambala Cantt. and further directing the defendant to hand over the vacant possession of that piece of land to the plaintiff and by granting decree of permanent injunction to restrain him from alienating it

BRIJ MOHAN BHALLA
2019.08.06 14:52
I attest to the accuracy and
authenticity of this document
Chandigarh

further in any manner.

As per the version of the plaintiff, she had purchased a plot measuring 1 kanal 2 marlas vide sale deed No.4352 dated 29.10.1985 and she is in possession thereof as owner since then and mutation has also been entered and sanctioned in her favour; that the defendant had purchased piece of land adjoining to the plot of plaintiff; that he has encroached upon the area of plaintiff shown by letters ABC in the site-an; that the plaintiff had raised construction of rooms leaving portion ABC for tethering cattle etc.; that the plaintiff had differences with the earlier owner of the land and for the said reason the area was demarcated by Survey of India and Collector, Ambala; that the defendant was not showing his sale deed and was not disclosing as to how much area, he had purchased; that on 29.8.2001, the defendant with the help of anti-social elements, threatened to encroach upon the land of the plaintiff; that the husband of plaintiff submitted an application at Police Station, Mahesh Nagar but the defendant in connivance with the police officials had encroached upon the land shown by letters ABC in the site plan measuring 157 square yards, in the process blocking the gate of the plaintiff at point X in the wall shown by letters AC causing financial loss to the plaintiff, as well as mental harassment; that security proceedings under Section 107/151 Cr.P.C. in that respect are pending before Executive Magistrate, Ambala. Ultimately, feeling aggrieved the plaintiff had brought the suit in question.

On notice, the defendant appeared and filed a written statement contesting the suit raising preliminary objections that the suit

BRIJ MOHAN BHALLA
2019.08.06 14:52
I attest to the accuracy and
authenticity of this document
Chandigarh

was not maintainable; that the site plan attached with the plaint was wrong; that the plaintiff could file a suit for partition; that the suit was bad for non-joinder of necessary parties; that the plaintiff had suppressed material facts from the Court; that the plaintiff had encroached upon the land of defendant; that the plaintiff had already been in occupation of area more than purchased by her; that the suit was barred by principle of resjudicata etc. On merits, the defendant contended that he had purchased the plot towards southern side of the plot of plaintiff and he had constructed boundary wall and was in possession of the said land. According to the defendant, the plaintiff had purchased one kanal two marlas of land i.e. 665 square yards but she was in occupation of 900 square yards at the spot and had encroached upon the land of the defendant, therefore, she should be directed to hand over the vacant possession of the excess land to the defendant; that the plaintiff had constructed her house in the year 1985 and the intervening wall AC was in existence; that the demarcation carried out by revenue officials revealed that plaintiff was in unauthorized possession of about two karams (11 feet); that report was signed by family members of the plaintiff. In the end, the defendant prayed for dismissal of the suit.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the trial Court dismissed the suit vide judgment dated 22.1.2010.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Ambala, which

BRIJ MOHAN BHALLA
2019.08.06 14:52
I attest to the accuracy and
authenticity of this document
Chandigarh

was assigned to learned Additional District Judge, Ambala, who vide judgment and decree dated 20.4.2011 dismissed the same.

Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted and the impugned judgments passed by the Courts below be set aside.

On getting notice, the respondent has appeared before this Court through counsel.

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

The main grounds for dismissal of the suit by the trial Court were that the site plan produced by the plaintiff Ex.P2 is not reliable since it depicts the width of southern side of the plot of the plaintiff BC as 135'4", whereas in terms of the sale deed Ex.P4 in favour of the plaintiff the width of southern side of the plot of the plaintiff is shown as 126'5"; that the site plan does not bear the name, signatures or stamp of the draughtsman; furthermore, the draughtsman, who had prepared the site-plan was not examined by the plaintiff to prove the site-plan Ex.P2, therefore, it could not be relied upon; that though PW4 Attar Singh had deposed that he had prepared the map Ex.PW4/A while doing topographical survey of land in dispute and found that defendant had encroached upon area shown with letters ABC in the said map Ex.PW4/A, however, the width of BC was shown as 137'9" but as stated earlier the width of southern portion of the plaintiff as per her sale deed was 126'5" and she could not claim area more than that, as such the map Ex.PW4/A

BRIJ MOHAN BHALLA
2019.08.06 14:52
I attest to the accuracy and
authenticity of this document
Chandigarh

could not be taken into consideration. Furthermore, three demarcation reports were submitted by the plaintiff. Though in the demarcation report dated 15.3.1986, there was no dispute regarding the alleged encroachment by the defendant, similar position being there with regard to demarcation report dated 29.6.1994, however on 8.9.2006, Chander Parkash owner of the land towards the northern side of the land of the plaintiff had moved an application to the SHO for getting the land demarcated from Kanungo. The demarcation was carried out and as per report of Kanungo dated 28.8.2006 Mark PZ, the defendant Sawan Ram was found to be in possession of excess area of one marla, Ginna Devi present plaintiff in possession of excess area measuring 5 marlas, whereas the area in possession of Chander Parkash was deficient to the extent of 6 marlas; that in the site plan attached with the said report, the width of the southern portion of the plot in possession of the plaintiff was 126 feet. Further, as per demarcation report dated 29.2.1996 Ex.D30, which was submitted as a result of demarcation carried out on request of Poornima Rani, the plaintiff was found to have encroached upon 2.5 marlas land of defendant. However, that report was not taken into consideration by the trial Court for the reason that neither Poornima Devi nor the official, who had carried out the demarcation and submitted the report had appeared in the Court as witnesses. Then coming to report by Naib Tehsildar of village Salaraheri, Ambala, who was appointed as Local Commissioner by the trial Court on an application of plaintiff, in his report Naib Tehsildar had mentioned that he had carried out the demarcation in presence of the parties. In terms of the report, plaintiff was found to be in possession of 1 kanal 2 marlas of

BRIJ MOHAN BHALLA
2019.08.06 14:52
I attest to the accuracy and
authenticity of this document
Chandigarh

land in accordance with the dimensions given in the sale deed of the plaintiff and the defendant was in possession 2 kanals 2 marlas of the land. In that way, neither the plaintiff had encroached upon the land of defendant nor the defendant had encroached upon the land of plaintiff.

Therefore, the claim of plaintiff was rejected.

When the impugned judgment and decree were challenged by the plaintiff by way of filing an appeal, to District Judge Ambala, which was assigned to Additional District Judge, Ambala, he did not find any merit in the appeal and affirmed the findings recorded by the trial Court, in the process dismissing the appeal.

Both the Courts below are unanimous in concluding that plaintiff has failed to establish that the defendant has encroached upon any part of her plot.

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.

1.8.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

BRIJ MOHAN BHALLA
2019.08.06 14:52
I attest to the accuracy and
authenticity of this document
Chandigarh