

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

RSA-57-2012(O&M)

Date of decision:-15.11.2019

Sushil Gupta and another

...Appellants

Versus

Bishna Ram(since dead) through his legal representatives

...Respondent

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

Present: Mr.Adarsh Jain, Advocate
for the appellants.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs – Sushil Gupta and his wife Meenu Gupta had brought a suit against defendant Bishna Ram seeking a decree for mandatory injunction directing the defendant to remove the construction made by him in December, 2001 on the land belonging to the plaintiffs with consequential relief of permanent injunction restraining the defendant from encroaching upon the said land belonging to the plaintiffs.

As per the version of the plaintiffs, plaintiff No.1 is owner of 1/3 share and plaintiff No.2 is owner of 2/3 share in the land measuring 41 kanals 19 marlas bearing khasra Nos.58//12/2(0-15), 12/3(1-9), 13(8-0), 14/1/2(2-6), 18/2/2(4-14), 19(8-0), 21/1(3-6), 21(6-8), 22/1/2(5-10), 23/1/2(0-3), 62//2/1/2/(0-8), 63//5/9(0-2); they had purchased this land from the previous owner Bhupinder Singh vide registered sale deed dated 24.5.2001 and they have been in peaceful possession thereof since then; they had got their land demarcated and it came out that defendant has encroached upon 8 marlas of land from khasra No.62//1/1/2/1 and khasra No.63//5/9; the plaintiffs requested the defendant to remove the encroachment; the defendant promised to do so but did not do so; the plaintiffs reported the matter to the police also but to no effect. Hence they brought a suit.

On notice, the defendant appeared and filed written statement contesting the suit taking various legal objections, on merits contending that he had purchased 2 kanals out of 6 kanals 5 marlas of land comprised in khasra No.62//1/1 from its then owner Gulab Singh vide registered sale deed No.1796 dated 1.8.1978 executed on 15.6.1978 and he was put in possession of that land; that he had raised construction over the purchased land. The defendant denied that he has encroached upon any part of the property of the plaintiffs. The defendant further contended that Khasra No.62//1/1

was got demarcated and possession of defendant was found to be correct. Refuting the remaining averments in the plaint, the defendant prayed for dismissal of the suit.

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

1. Whether the plaintiffs are owners in possession of the suit property as detailed in para-1 of the plaint? OPP.
2. In case, issue No.1 is decided in favour of the plaintiffs, then whether plaintiffs are also entitled to the relief of injunction as prayed for? OPP.
3. Whether the suit filed by the plaintiffs is not maintainable in the present form? OPD.
4. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD.
5. Whether the plaintiffs have not approached the Court with clean hands? OPD.
6. Relief.

Both the parties led evidence in respect of their claims.

During the course of their evidence, the plaintiffs had examined Sh.Bansi Dhar Gulati as PW1, Sh.Madan Lal Gupta as PW2 and Sh.Nirmal Singh as PW3 besides tendering certain documents.

On the other hand, the defendant had got his statement

recorded as DW3 and he also examined Sh.Amarnath as DW1 and Sh.Banarsi as DW2.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs and against the defendant, issues No.3 to 5 against the defendant and in favour of the plaintiffs. Resultantly, suit of the plaintiffs was decreed and the defendant was directed to hand over the said encroached land to the plaintiffs within two months from the date of passing of judgment. This was so done vide judgment and decree dated 25.10.2010.

The defendant was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Ambala, which was assigned to Additional District Judge, Ambala, who vide judgment and decree dated 22.9.2011 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiffs.

Now it was turn of the plaintiffs to feel dissatisfied and they had filed the present regular second appeal before this Court, notice of which was issued to the respondent, who was reported to have expired and his legal representatives were brought on file, who also did not turn up to offer a contest.

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

Since the dispute between the parties was basically of demarcation, the plaintiffs had relied upon the demarcation report Ex.PB with regard to demarcation got carried out on 5.5.2002. The trial Court considering such report and other facts and circumstances had decreed the suit of the plaintiffs. However, learned Additional District Judge, Ambala observed that plaintiffs had placed on record demarcation report carried out on 5.5.2002 prior to the institution of the suit; that no one was examined by the plaintiffs to prove such report, whereas defendant had placed on record demarcation report Ex.D2 dated 5.6.2002 wherein the area was found as per the revenue record; that the Local Commissioner was appointed by the trial Court vide order dated 16.1.2003/13.8.2003, who submitted his report dated 24.4.2004 on 6.5.2004; the report had gone against the plaintiffs and they had filed objections against such report. Learned Additional District Judge, Ambala found that such demarcation had also not been carried out as per High Court rules and orders. However, since the plaintiffs could not establish on record their case by leading cogent and convincing evidence, their suit was dismissed by way of setting aside the judgment and decree passed by the trial Court.

When the appeal was filed before this Court, an application was moved for directing the trial Court to appoint Local Commissioner to carry out the demarcation and counsel for the

appellants made a statement that the appellants will remain bound by the report, which will be made afresh in accordance with High Court rules and orders. That request was allowed. It was so done accordingly and demarcation report submitted by Naib Tehsildar, Ambala has been forwarded to this Court. A perusal of this report goes to show that as a result of demarcation, the defendant through legal representatives was found to be in unauthorized possession of 0 kanal 5 marlas of land of the plaintiffs. A site plan showing the extent of encroachment has been attached with report. I have perused the report with the assistance of learned counsel for the appellants and I do not see any reason to discard the same.

Accordingly, the present appeal is accepted. The judgment and decree passed by Additional District Judge, Ambala is set aside, whereas the judgment and decree passed by the trial Court decreeing the suit of plaintiffs are restored with the modification that legal representatives of the deceased defendant are directed to remove the encroachment as pointed out in report, which is exhibited as Ex.DX and site plan attached therewith as Ex.DY within a period of two months from the date of instant judgment, failing which, the appellants/plaintiffs would be entitled to get the possession by way of moving an execution application before the trial Court.

15.11.2019

Brij

(H.S.MADAAN)
JUDGE**Whether reasoned/speaking: Yes/No****Whether reportable : Yes/No**