

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

RSA-1810-2013(O&M)

Date of decision:-18.1.2019

Nannu

...Appellant

Versus

Sohan Pal

...Respondent

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

Present: Mr.Johan Kumar, Advocate
for the appellant.

Mr.Rajesh Lamba, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Nannu had brought a suit for possession with consequential relief of permanent injunction against defendant Sohan Pal on the averments that he is owner in possession of a plot measuring 1 Kanal 2 Marlas comprised in Khewat No.295, Khatoni No.331, Khasra No.276 situated within the revenue estate of village Kalsada, Tehsil Hathin, as per the jamabandi for the year 1999-2000; that the plaintiff had purchased the said plot from his vendors Binda etc. vide registered sale deed bearing document No.841 dated 21.4.1989 and he has

been in possession thereof as owner ever since; that although the defendant has got no concern with the suit property, nevertheless about 6 months prior to filing of the suit (suit was filed on 17.7.2008), the defendant encroached upon some portion of that property reflected as 'ABCD' and shown in red colour of the site plan attached with the plaint; that the defendant is liable to vacate the possession of the encroached portion in favour of the plaintiff; that the plaintiff had moved an application before Tehsildar, Hathin for demarcation of the suit property, which was accordingly carried out by retired Kanungo on 19.4.2008 in the presence of witnesses and other respectable persons of the village and it was found that defendant is in illegal and unauthorized possession of portion 'ABCD' of the suit property; that the defendant threatened to encroach upon the suit property further; that the plaintiff asked the defendant to vacate the encroached portion but to no effect, giving rise to cause of action to the plaintiff to bring the suit in question.

On notice, the defendant appeared and filed written statement contesting the suit raising preliminary objections to the effect that the suit is not maintainable since the plaintiff is neither owner nor in possession of the suit property and defendant is in possession as owner residing therein for last more than 30 years continuously after constructing pucca residential house therein; that the plaintiff has no locus standi to file the present suit since he is totally stranger qua the suit property; that no cause of action arise to the plaintiff to bring the present suit; that the plaintiff was estopped by his own conduct from filing the suit; that the suit is bad for suppression of material facts; that the defendant has been residing in the suit property for the last

more than 30 years continuously, peacefully and uninterruptedly well within notice and knowledge of the plaintiff; that the suit was not properly valued for the purpose of Court fee and jurisdiction. On merits, the defendant contested the averments in the plaint, whereas reiterated the submissions as made of preliminary objections, finally craving for dismissal of the suit with special costs.

On the pleadings of the parties, following issues were framed vide order dated 3.5.2010:

1. Whether the plaintiff is entitled to a decree for possession as prayed for? OPP.
2. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant from further encroaching any portion of the suit property? OPP.
3. Whether the suit of the plaintiff is not maintainable? OPD.
4. Relief.

In order to prove his case, the plaintiff Nannu had himself appeared as PW2 besides examining Amar Singh, Retd.Kanungo as PW1 and Joginder as PW3(wrongly written as PW1). The plaintiff also tendered in evidence documents Ex.P1 and Ex.P2.

On the other hand, the defendant himself appeared as DW1 besides examining Jitender as DW2. He also tendered in evidence copy of plaint of suit titled 'Sohan Pal Vs. Nannu etc.' as Ex.D1.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff, issue No.3 against the defendant, resultantly suit of the plaintiff was decreed with costs to the effect

that the defendant was restrained from further encroaching the suit property. The defendant was directed to hand over the vacant possession of encroached portion of the suit property as shown in local commissioner's report dated 19.4.2008 to the plaintiff within a period of two months from the date of order.

The defendant was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, which was assigned to Additional District Judge, Palwal, who vide judgment and decree dated 21.11.2012 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit.

Being dissatisfied with the judgment and decree passed the First Appellate Court, the plaintiff had filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

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

It may be mentioned here that the trial Court finding merit in the case of the plaintiff had decreed his suit. However, learned First Appellate Court differed with the trial Court and rejected the claim of the plaintiff mainly for the reason that according to plaintiff the suit property as comprised in Khewat No.295, Khatoni No.331, Khasra No.276 measuring 1 Kanal 2 Marla, which is so reflected in the jamabandi Ex.P1, in that way plaintiff has got title of land measuring 1 Kanal 2 Marla i.e. 22 marlas, whereas according to demarcation report Ex.P2 dated 9.5.2008 prepared by

PW1 Amar Singh, Retd.Kanungo, total area of Khasra No.276 has been taken

to be 1 Kanal 8 Marla, which goes to show that the demarcation report is against the revenue record. The encroachment of plaintiff has been shown over portion of 2 Marlas and PW1 Amar Singh, Retd. Kanungo had stated that defendant Sohan Pal had encroached upon 49 square yards of land. His statement has not been relied upon for the reason that the original record has not been brought by him. The First Appellate Court rather went on to observe that the plaintiff is encroacher upon the land of somebody else. The trial Court has referred oral evidence of the parties also while coming to the conclusion that it cannot be said that defendant has made encroachment over the suit property. However, I find that the approach of the First Appellate Court has been somewhat hasty resulting in proper justice being not done to the parties. In the revenue record, area of Khasra No.276 is mentioned to be 1 Kanal 2 Marla. The Local Commissioner had observed the defendant to be in wrongful possession of area out of Khasra No.276. The report of the Local Commission is somewhat sketchy lacking proper details.

Thus to finally adjudicate the controversy between the parties, I find it proper and appropriate, if the demarcation is got conducted afresh. Therefore, the judgments passed by the Courts below are set aside by way of acceptance of the appeal. The trial Court is directed to appoint some senior revenue officer well acquainted with the procedure of demarcation to visit the spot after giving prior notice to both the parties and then to carry out demarcation at the spot as per High Court Rules and Orders and instructions of Financial Commissioner as applicable to the State of Haryana. The local revenue authorities shall render proper assistance to him in making the relevant record available to the Local Commissioner. The demarcation be got

conducted on payment of requisite charges by the plaintiff. After receipt of the report by Local Commissioner, the copy of which be got supplied to opposite counsel and thereafter the case be decided afresh at the earliest by affording both the parties opportunities to lead evidence.

The parties through counsel are directed to appear before the trial Court on 21.2.2019.

18.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No