

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

RSA-299-2013(O&M)

Date of decision:-10.4.2019

Sat Narain and others

...Appellants

Versus

Smt.Rukmani and others

...Respondents

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

Present: Mr.Piyush Aggarwal, Advocate
for the appellants.

Mr.Sunil Panwar, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that the plaintiffs had brought a suit for possession and permanent injunction, on the averments that they along with other co-sharers are owners of a Gitwar comprised in Khewat No.11 Min/12 Khatoni No.25 Min. khasra No.36/19/4 measuring 1 kanal 18 marlas situated at village Sangahera, Tehsil & District Rohtak; that other ancestral property of plaintiffs is also situated near this plot; that the plaintiffs are having 1/4 share in the plot bearing khasra No.36/19/4; that defendants No.1 to 3 are owners of plot comprised in khewat No.68 khatoni No.139

khasra No.36/19/3 measuring 1 kanal 18 marlas situated in the village. However, all the defendants in collusion with each other have encroached upon some area of the properties of plaintiffs, raising construction over the same, not listening to the requests of the plaintiffs to remove the encroachment; that the plaintiffs applied for demarcation, which was carried out in presence of both the parties and it was found that the area mentioned as under belonging to the plaintiffs was encroached upon and was in illegal possession of defendants as detailed under:-

(i) Plot No.36/19/4 : Eastern nil, Western 10' Northern 116' and Southern 110' total 550 Sq. feet.

(ii) Plot (Ancestral within Abadi) East : 71', West 71' North 7" Southern 13" :- $71(13+7)$:- 710 Sq. feet, Total encroached area :- 1260 Sq. feet.

Therefore, the defendants are liable to vacate the encroached portion by removing their construction. The plaintiffs prayed that a decree for possession of the area measuring 1260 Sq. feet be passed in their favour against defendants and defendants be restrained from encroaching over any other area of the suit property and from raising any construction over the same.

Notice of the suit was given to the defendants. Defendants No.2 to 7 were served but did not appear, as such they were proceeded against ex parte. Subsequently, defendants No.1, 2, 4

to 7 had filed a joint written statement and the ex parte order against defendants No.2, 4 to 7 was set aside. In the written statement filed by them, they took up several preliminary objections contending that defendants No.1 to 3 had sold the property through *BENAMI* transaction to the forefathers of the defendants No.4 to 7, who had constructed their houses over the same about 70 years ago and since then the suit property was under the possession of defendants No.4 to 7, who were residing there; that the plaintiffs had no right or concern with the property. Denying the remaining allegations, such defendants prayed for dismissal of the suit.

It is pertinent to mention here that plaintiff No.1 Bhim Singh had died during the pendency of the suit and his legal representatives were brought on record.

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

1. Whether plaintiffs are entitled to a decree for possession of suit property as prayed for on the grounds as averred in the plaint? OPP.
2. Whether the suit has filed within limitation period? OPP.
3. Whether the plaintiffs are entitled to the consequential relief of injunction as prayed for on the grounds as averred in the plaint? OPP.
4. Whether no cause of action accrued to file the present suit?

OPD.

5. Whether the plaintiffs have no locus standi to file the present suit? OPD.

6. Relief.

In order to prove his case, the plaintiffs had examined Sh.Suresh Kumar, Halqa Kanungo as PW1 and Sh.Suresh son of the deceased plaintiff No.1 as PW2.

On the other hand, the defendants had examined defendant No.5 - Rajinder as DW1, Sh.Randhir Singh as DW2, Sh.Khem Chand – defendant No.1 as DW3.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 to 3 in favour of the plaintiffs, issues No.4 and 5 against the defendants. Resultantly, the trial Court vide judgment and decree dated 18.9.2010 decreed the suit of the plaintiffs and a decree for possession of area measuring 1260 Sq. feet detailed in para No.3 of the plaint was passed in favour of the plaintiffs and against the defendants, who were directed to hand over the vacant possession of the aforesaid area to the plaintiffs. The defendants were restrained from encroaching upon any other area of the suit property and also from raising any construction over the suit property.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Rohtak,

who vide judgment dated 27.3.2012 dismissed it.

The defendants are feeling dissatisfied with the said judgments and decrees passed by the Courts below and have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by the plaintiffs against them be dismissed.

On getting notice of regular second appeal, the respondents had appeared before this Court through counsel.

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

Both the Courts below on appreciation of the evidence adduced by the parties especially report of PW1 Sh.Suresh Kumar, Halqa Kanungo, who had carried out the demarcation of the suit property, preparing report Ex.P1, memo of rpesence Ex.P2 coming to the conclusion that 1260 sq. feet area had been encroached upon by the defendants as well as considering jamabandi relating to Khasra No.36/19/4 Ex.PX and Khasra No.36/19/3 Ex.PY had found merit in the claim of the plaintiffs. This fact has also been noticed that the demarcation had taken place at the spot and Sat Narain defendant had put his signatures thereon and further the defendants had not challegned that demarcation report. The defendants have failed to place on file any document to show their title to the land in question.

The defence of the defendants is very vacillating alleging sale by way of *BENAMI* transaction without placing on record the documentary evidence to support their claim.

As regards the authority *Nirmal and another Versus State of Punjab and others, 2012(68)RCR(Civil)308* referred to by learned counsel for the appellant, the same does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

The judgments and decrees passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

No substantial question of law comes out to be there.

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 and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

10.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No