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

**RSA No.1131 of 2016 (O&M)
Date of Decision: 13.05.2019**

Inder Singh and another

..... Appellants

Versus

Hans Raj Garg

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Parmod Chauhan, Advocate
for the appellants.

Mr. Raj Kumar Gupta, Advocate
for the respondent.

SUDIP AHLUWALIA J. (ORAL)

1. The dispute in this appeal is *qua* the alleged encroachment on the part of appellants, who were the defendants in the original suit for possession, which was decreed in favour of the respondent-plaintiff by the Ld. Civil Judge (Junior Division), Jind vide the impugned judgment and decree dated 23.02.2013. The appeal preferred against the said decree was dismissed by the Ld. Additional District Judge, Jind on 19.10.2015.

2. Claim of the respondent-plaintiff was in respect of possession of an area measuring 1' x 20' on his plot shown in Red Colour in the Site Plan attached with the Plaint, which abuts shop of the appellants-defendants situated on the back side of Gohana Road, Jind. The suit was resisted by the appellants, who in Para No.2 of the Written Statement denied that they had

encroached upon 1' x 20' portion of the plaintiff's shop. But in the succeeding Para No.3, it was also pleaded by them, *“Question of any request to demolish the wall does not arise. Moreover the plaintiff has been seeing the defendants raising construction and never objected to it. The said wall is existing since 1995 and the plaintiff has never objected to it”*.

3. It has been further contended on behalf of the appellants that the disputed boundary wall was constructed after obtaining permit from the Local Municipal Committee, Jind, being Permit No.52 dated 15.06.1995. In the same year, an Agreement to Sell between the plaintiff and the Municipal Committee, Jind was also entered into and possession of the plot was allegedly delivered to the plaintiff's wife, although the actual registered Sale Deed was executed only on 22.06.2009. The respondent thereafter filed his suit for possession about a month later, on 28.07.2009.

4. Of course, no specific defence to the effect that the suit is barred by limitation was taken in the written statement, but stress on behalf of the appellants is on the above quoted extract from Para No.3 of the original written statement to emphasize that in any case the suit was barred by the principles of estoppel, waiver and acquiescence, if not by limitation outright.

5. On the other hand, contention of the respondent-plaintiff before this Court is that there is absolutely no question of the suit being barred on either of the grounds claimed by the appellants, because, according to Article 65 in the Schedule of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein (as in the present case), the period of limitation of 12 years begins to run, *“when the possession of the*

defendants becomes adverse to the plaintiff". But, as can be seen from the entire Written Statement dated 17.01.2009, which is in the Lower Court Record, there was never any plea to the effect that the appellants-defendants had at any time been in adverse possession "*hostile*" to the interest of the respondent-plaintiff. On the other hand, the plea was merely that the respondent-plaintiff had been seeing the appellants-defendants to raise construction of their disputed wall since 1995 and had never objected to the same. This averment when seen in the light of the separate pleading in which the encroachment itself had been denied by the defendants would clearly go to indicate that any suggestion of the existence of ownership by adverse possession was palpably missing in their defence.

6. That actually there has been some encroachment by way of thickness of the appellants' wall is no longer in dispute, in view of the Commissioner's Report which had been finally accepted by both the Ld. Courts below. There was of course some discrepancy regarding the actually found encroachment which was a few inches less than 1 (one) foot in width, as claimed by the respondent-plaintiff, but in the given circumstances, the same has no great bearing to the ultimate fate of the proceedings.

7. For the aforesaid reasons, this Court finds no ground to interfere with both the impugned judgments being challenged in this appeal, since where the appellants-defendants had not initially admitted having committed any encroachment whatsoever, a suggestion to the effect that the suit could have been barred by the principles of estoppel, waiver and acquiescence to such encroachment, itself becomes contradictory.

8. This Court, thus, finds no merit in the present appeal and the same, is hereby, dismissed.

May 13, 2019
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(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No