

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2414-2015 (O&M)

Date of decision: 11.09.2019

Dharam Singh

...Appellant

Versus

Umed Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ravinder Rana, Advocate,
for the appellant.

Mr. S.P. Chahar, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. This is a regular second appeal that has been filed seeking to challenge the judgment and decree dated 17.04.2015 passed by Addl. District Judge, Jhajjar reversing the findings of the trial Court and decreeing the suit of the plaintiff.

2. In brief, the facts are that the plaintiff-respondent herein filed a suit for permanent injunction seeking to restrain the appellant-defendant from encroaching upon or raising construction of a wall over land comprised in Khasra No. 333, 0-2 Marla Gair Mumkin Gadda Khad, Khewat No. 212/199, Khatoni No. 253 to the extent of $\frac{3}{4}$ share forcibly or

illegally.

3. It was contended by the plaintiff-respondent that he is owner in possession of the suit property which he purchased from Mangat Ram, his son Sukhbir and Manoj through a registered sale deed dated 26.02.2007. Subsequent to the sale deed, mutation No. 1806 was also sanctioned in his name. As the appellant - defendant was threatening to encroach upon the suit property as detailed above and wanted to raise a construction, he had no option but to file the suit.

4. The appellant - defendant filed a written statement taking a preliminary objection regarding non-maintainability, no cause of action and that it was the plaintiff who wanted to encroach upon his land. In fact, there is a separate suit pending in the Civil Court at Jhajjar.

5. No replication was filed. On the basis of the pleadings of the parties, issues were framed and evidence led.

6. In order to prove his case, the plaintiff-respondent examined Rambir as PW-1, plaintiff-respondent himself appeared as PW-2, Sh. Dinesh Kadyan, Advocate as PW-3 and placed on record jamabandi for the year 2001-02 as Ex.P-1, mutation No.1806 as Ex.P-2, Aks-sizra as Ex.P-3, sale deed dated 26.02.2007 as Ex.P-4, jamabandi for the year 2006-07 as Ex.P-5, mutation No. 1892 as Ex.P-6, mutation No. 1914 as Ex.P-7, mutation No.1806 as Ex.P-8, Local Commissioner report as Ex.PW3/A, site plan as Ex.PW3/B, notice as Ex.PW3/C and presence-sheet as Ex.PW3/D. On the other hand, the appellant-defendant stepped into the witness box as DW-1.

7. The trial Court dismissed the suit of the plaintiff-respondent by placing reliance upon the report of the Local Commissioner PW3. On a perusal of the report, the trial Court came to the conclusion that the Local Commissioner had not given a clear cut finding that the gate and pillar that have been installed on the suit property are on which khasra number while further opining that there is no evidence on the record that the gate and pillar were installed after filing of the suit, while further holding that the witness, namely Local Commissioner had prepared the site plan but no such site plan was available on the file. The suit was dismissed holding that the plaintiff-respondent had failed to bring on record any evidence to show that he is in possession of a portion which has been illegally encroached upon by the appellant-defendant by raising a construction. The said judgment and decree was challenged by the plaintiff-respondent which was allowed. Aggrieved, the instant appeal has been filed.

8. Learned counsel appearing on behalf of the appellant-defendant argues that the Appellate Court has erred in setting aside the well reasoned judgment and decree, especially when the report of the Local Commissioner had specifically stated that he could not tell in which khasra number the gate had been installed or which area had been encroached upon.

9. Per contra, learned counsel appearing on behalf of the plaintiff-respondent submits that the trial Court had examined all the evidence as produced on the record, which reflects his ownership on the basis of a sale deed executed in his favour and the mutation entered thereafter. It is argued that the revenue record itself reflects his possession and there is a

presumption of truth attached to the revenue record.

10. I have heard learned counsel for the parties and with their assistance have gone through the paper-book.

11. The plaintiff-respondent seeking an injunction against the defendant-appellant had proved on the record jamabandi for the year 2001-02 Ex.P-1 and mutation No.1806 Ex.P-2 which show that he had purchased the suit property from Mangat Ram vide sale deed dated 26.02.2007, which is available on the record as Ex.P-4. The plaintiff had also purchased part of Khasra No. 333 on 15.07.2008 as reflected in mutation No. 191 and, therefore, had become owner of the whole khasra No. 333 and his possession stands duly reflected in the revenue record. The jamabandi for the year 2006-07 Ex.P-5 also proves the possession of the plaintiff over the suit property. The appellant herein did not prove by way of any documentary evidence that he was in possession of the disputed property other than his statement as DW-1. Merely because the report of the Local Commissioner had some contradictions in it and did not clearly specified the khasra numbers in which there was an encroachment, it does not mean that the plaintiff is not owner in possession of the suit property as stated by him based on the document as produced as exhibits. The trial Court did not look at any of the documents as adduced by the plaintiff-respondent or discuss the same, and, therefore, erred in dismissing the suit of the respondents-plaintiff. The Court has dealt with the documents as exhibited on the record and has rightly come to the conclusion that the plaintiff-respondent is shown to be owner in possession of the suit property and,

therefore, would be entitled to the injunction as sought for.

12. Consequently, finding no merit in the instant appeal, the same is dismissed while further upholding the judgment and decree of the Appellate Court with an injunction restraining the appellant herein from interfering in the peaceful possession of the plaintiff - appellant and raising any construction on the said suit land.

11.09.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.