

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 923 of 2014 (O&M)

Date of decision : 30.10.2019

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Rakesh Kumar and others

.....Appellants

vs.

State of Uttar Pardesh through

its Assistant Engineer – III, Palwal, District Palwal

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Deepak Sabherwal, Advocate for the appellants

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H. S. Madaan, J.

Briefly stated facts of the case are that State of Uttar Pardesh through its Assistant Engineer-III, Upper Division Agra Canal Department, Palwal, District Palwal, had brought a suit against defendants Rakesh Kumar, Ravinder Kumar and Sushil Kumar sons of Jai Dev, residents of B-143, New Colony, Palwal, District Palwal, seeking a decree for permanent injunction, restraining the defendants from interfering in ownership and possession of the plaintiff or from encroaching upon 'gair mumkin diggi' comprised in Khewat No. 4905 Min, Khatoni No. 5746 Min, Rect. No. 281, Killa No. 26 (0-9), situated within the revenue estate of Palwal, Tehsil and District Palwal.

As per version of the plaintiff it is owner in possession of the suit property with which the defendants have no concern. But they have been on a look out to encroach upon the same by adopting illegal means and force and have collected building material nearby the suit property. The suit property is quite valuable being adjacent to the GT Road Palwal. When the defendants remained adamant in going ahead with their illegal act of encroaching upon the suit property, feeling alarmed, the plaintiff brought the suit in question against such defendants in the court of competent jurisdiction at Palwal.

On getting notice, the defendants appeared and filed a joint written statement, contesting the suit raising various legal objections contending that the suit was not maintainable; that the plaintiff did not have any locus standi to bring the suit; that the plaintiff was estopped by its act and conduct from filing the suit and that no cause of action had arisen to the plaintiff to bring the suit; etc. On merits, the defendants refuted the assertion with regard to the plaintiff being owner in possession of the disputed diggi, rather contended that defendants are owners in possession of the property comprised in Rect. No. 281, killa No. 1/1, 1/2, 10/1/1 and 10/1/2 and this property abuts G.T. Road towards Western side. The diggi in question has been merged with G.T. Road which is evident from the demarcation report submitted by Sh. Keshav Dass, Ex. Office Kanunago, Palwal on 12.3.1991. Therefore, the defendants have got a legal right to protect their possession over the suit property and no cause of action arose to the plaintiff to bring the suit in question. Refuting the

remaining assertions, the defendants prayed for dismissal of the suit.

The plaintiff did not file any replication.

From the pleadings of the parties, following issues were struck:-

1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for ? OPP
2. Whether suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action and locus – standi to file the present suit ? OPD
4. Whether the plaintiff is estopped by his own acts and conduct to file the present suit? OPD
5. Relief.

In order to prove its case, the plaintiff examined Anurag Aggarwal as PW-1 and tendered his affidavit as Exhibit PW 1/A. Thereafter, the evidence of the plaintiff was closed by order of the Court on 16.10.2012.

On the other hand, defendant No.1 Rakesh Kumar himself stepped into the witness box as DW-1 and tendered his affidavit Exhibit DW 1/A. Thereafter the defendants closed their evidence after tendering documents - Exhibit D-2 copy of demarcation report and Exhibits D-3 to D-6 copies of jamabandies.

After hearing the arguments, the trial Court decided issue No.1 against the plaintiff in favour of the defendants and issues no. 2 to 4 in favour of the plaintiff. Accordingly, the suit of the plaintiff was dismissed vide judgment and decree dated 14.1.2013, passed by

Civil Judge (Junior Division), Palwal.

Feeling aggrieved, the plaintiff had challenged the said judgment and decree before District Judge, Palwal. Learned District Judge, Palwal, vide judgment and decree dated 29.1.2014, accepted the appeal by setting aside the judgment and decree passed by the trial Court and restrained the defendants from encroaching upon 144 sq. yards of the appellant-plaintiff, lying vacant on the spot, in any manner whatsoever.

Now it was turn of the defendants to feel aggrieved by the judgment and decree so delivered by the learned District Judge, Palwal and they have knocked at the door of this Court, by way of filing the present appeal.

Notice of the appeal was given to the respondent-plaintiff, who was duly served and had put in appearance through counsel. Subsequently, the counsel stopped appearing on behalf of respondent-plaintiff. Notice to the respondent was issued again, which was served, but none had put in appearance.

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

The plaintiff had filed suit with regard to the property bearing Rect. No.281, Killa No. 26 (0-9), which as per jamabandi for the year 2001-2002, plaintiff is shown to be owner of the said property. Even the trial Court in para No. 11 of the judgment has observed so, but then the trial Court went on to observe that plaintiff has not led any evidence which could show that defendants are threatening to encroach upon the suit property and that onus was

heavily upon the plaintiff to show that. This clearly goes to show the non-application of a judicious mind to the entire thing. If the defendants had not threatened to encroach upon the land of the plaintiff, where was the necessity for the plaintiff to take the trouble of approaching the Court, filing the suit for grant of permanent injunction and prosecuting the same. Once the trial court found that the plaintiff was owner in possession of the suit land and it was specific case of the plaintiff that defendants had been threatening the same by way of raising construction, the plaintiff was to be held entitled to grant of permanent injunction. The plaintiff was to be taken to have made out a case for restraint order against the defendants. The observation that the evidence led by the defendants is far more superior than the evidence of the plaintiff, is falacious. The trial Court has referred to copy of demarcation report Exhibit D-1, relied upon by the defendants without the defendants summoning and examining the revenue official, who had carried out the demarcation and his testimony being tested by cross examination. Therefore, placing reliance upon such report under the circumstances was uncalled for. The conclusion drawn by the trial court that the suit property comprised in Khewat No. 5746 Min. Rect. No.281, Killa No. 26 (0-9), has completely merged with the G.T. Road, is not sustainable. However, the trial Court did come to the conclusion that the earlier suit filed by the plaintiff, which was dismissed in default vide order Exhibit D-2, that same did not come in the way of filing of the second suit by the plaintiff as the same is on the basis of fresh cause of action and also for the reason that permanent injunction is

based upon a recurring cause of action. However, the trial Court fell in error in dismissing the suit of the plaintiff. That error was rectified by District Judge, Palwal, who has accepted the appeal.

Learned District Judge, Palwal had observed that two applications, i.e. one for demarcation of the suit land through Sh. Mithan Lal, Retired Girdawar and another by Sh. Dev Raj, Retired Girdawar, had been filed by respondents-defendants, which were orally contested by the appellant-plaintiff. Learned District Judge had made very important observation in the later part of the judgment observing as under :-

“3. It is pertinent to mention here that on 23.12.2013, both the sides alongwith their respective counsels had made statements that to resolve the controversy in dispute, a fresh demarcation of the disputed area be got done through some Local Commissioner, which shall be binding upon them, for all intents and purposes and this appeal shall be disposed of in accordance with the same. Hence, in view of their above statements, the suit land was got demarcated afresh through Sh. Rajender Singh, Sadar Kanungo, Tehsil and District Palwal and as per his report, an area of 144 square yards of the appellant-plaintiff is lying vacant on the spot.

4. Hence in view of the aforesaid statement of the respondents-defendant through their counsel binding themselves for disposal of this appeal in accordance

with the demarcation report, I hereby permanently restrain them from encroaching upon 144 square yards of the land of the appellant-plaintiff lying vacant on the spot, in any manner whatsoever. The appeal is disposed of by decreeing the suit and setting aside the impugned judgment and decree dated 14.1.2013.”

Such order/judgment by District Judge, Palwal, does not come out to be suffering from any illegality or infirmity, which might have called for the same being upset by way of acceptance of regular second appeal.

As regards the Appellate Court not giving issue wise findings, the learned District Judge, had adjudicated the core issue before him, as to whether the defendants having no concern with the suit land belonging to the plaintiff, had been threatening to interfere in possession of the plaintiff over such land. Therefore, the order/judgment in question cannot be interfered with, adopting a hyper technical approach that judgment wise findings had not been given. The whole dispute is covered by issue No.1 whether the plaintiff is entitled to a decree for permanent injunction, as prayed for, remaining issues No. 2 to 4 being mainly legal issues.

As regards the contention of learned counsel for the appellants that learned District Judge has decided the matter solely on the basis of report of Local Commissioner, learned District Judge has noted in para No. 3 of the order/judgment that on 23.12.2013, both the sides alongwith their respective counsels had made statements

that to resolve the controversy in dispute, a fresh demarcation of the disputed area be got done through some Local Commissioner, which shall be binding upon them for all intents and purposes and the appeal be disposed of in accordance with the same. As such the learned District Judge had got the suit land demarcated from Sh. Rajender Singh, Sadar Kanungo, Tehsil and District Palwal and accordingly decided the appeal on the basis of that report, as had been agreed upon by the parties/their counsels. Therefore, no fault can be found with approach of the District Judge in doing so.

No substantial question of law arises in the present appeal.

Accordingly, the appeal stands dismissed.

30.10.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No