

RSA No. 4106 of 2018

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

RSA No. 4106 of 2018

Date of Decision: July 18, 2019

Vasdev

..... APPELLANT(s)

Versus

Ranbir Singh and others

..... RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

LISA GILL, J.

Appellant-plaintiff has filed this appeal being aggrieved of judgment and decree dated 19.01.2018, passed by the learned Addl. District Judge, Hoshiarpur as well as judgment and decree dated 30.11.2016, passed by the learned Addl. Civil Judge (Sr. Division), Garhshankar.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiff filed a suit for possession of 3 Marlas of land as detailed in the plaint. It is pleaded that the plaintiff is the owner of the suit property. The defendants are alleged to have encroached upon land measuring 3 Marlas as depicted in the site plan in an illegal and forcible manner on 19.11.2010. Accordingly, the suit was filed after the defendants refused to accede to the genuine request of the plaintiff.

Defendants contested the suit. It is stated in the written statement that defendants are owners in possession of land measuring 2 Kanals 19 Marlas in Khasra No.85//6/2 bearing Khata No.189/216. It is denied that there is any encroachment carried out by the said defendants on Khasra No. 85//7/1. Dismissal of the suit was prayed for.

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Replication to the written statement was filed.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i) Whether suit property marked as ABCD and as shown in red colour in the site plan which is part of Khasra No.85//7a/1(3-6) owned by the plaintiff ?OPP.
- ii) Whether the defendants have encroached upon the suit property? OPP
- iii) Whether the plaintiff is entitled to relief of possession of the suit property as detailed and described in the head note of the plaint and as shown in the site plan attached ? OPP
- iv) Whether site plan of the plaintiff is correct? OPP
- v) Whether suit of the plaintiff is within time? OPP
- vi) Whether plaintiff has no locus standi and cause of action to file this suit ? OPD
- vii) Whether plaintiff has not come to the court with clean hands and suppressed material facts ? OPD
- viii) Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiff failed to prove his case on the basis of the evidence on record. Suit was accordingly dismissed.

Appeal filed by the plaintiff-appellant was dismissed by the learned Additional District Judge, Hoshiarpur, vide impugned judgment and decree dated 19.01.2018. Aggrieved therefrom, present appeal has been filed.

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Learned counsel for the appellant submits that both the learned Courts below have grossly erred on facts and in law while dismissing the suit filed by the plaintiff. It is contended that the evidence on record has been misread. Report of the Local Commissioner reveals that the respondents-defendants have indeed encroached upon the 3 Marlas of land marked as 'ABCDGH', shown as red in the site plan, out of Khasra No.87//7/1. The Local Commissioner has found that the land in question is a part of the khasra numbers belonging to the plaintiff. Report of the Local Commissioner has been wrongly discarded. It is, thus, prayed that both the impugned judgments and decrees be set aside and this appeal be allowed. Consequently, suit filed by the plaintiff be decreed throughout.

I have heard learned counsel for the appellant and I have gone through the file with his assistance.

After considering the arguments raised and perusing the record, I do not find any merit in the arguments raised by learned counsel for the appellant. The plaintiff while testifying as PW-1 stated that the site plan regarding the suit property Ex.P-1 was got prepared by him at the time of filing the suit. He claimed to be the owner of land measuring 3 Kanals 6 Marlas out of Khata No. 190/217 bearing Khasra No. 85//7/1 marked as 'ABCDEF' in the site plan as per Jamabandi for the year 2004-2005. PW-1 stated that the defendants-respondents have illegally encroached upon his land measuring 2 Marlas out of Khasra No.6/2. Learned counsel for the appellant is, however, unable to deny that in his cross-examination, PW-1 when confronted with the Masavi and the site plan, admitted that if the site

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of properties in his possession are compared with the Masavi (Ex.D-4), it is apparent that the appellant is in possession of his land and no part of his property was encroached upon by the respondents/defendants.

Furthermore, reliance has been rightly placed upon the report (Ex.P-2) of the Local Commissioner. The Local Commissioner duly appointed by the learned Trial Court was admittedly a revenue official. He visited the spot and it is mentioned in the report (Ex.P-2) that there is no encroachment by the respondents and that both the parties are in possession of their respective share. No objections have been filed qua the said report (Ex. P-2). Learned Additional District Judge has observed that the appellant in fact amended his plaint and alleged that during the pendency of the suit more land was encroached upon by the respondents but by way of this amendment, he sought to resile from his earlier statement made by him in his cross-examination, where he admitted that the area under his ownership is in his possession. The respondents have indeed led positive evidence in the shape of Jamabandi for the year 2004-2005 (Ex.D-1), Jamabandi for the year 2014-2015 (Ex.D-2), Jamabandi Ex.D-3 and Aks Latha (Ex.D-4). The said Aks Latha/Shajra is proved on record by the Local Commissioner alongwith his report. Both the learned Courts below have rightly returned a concurrent finding of fact to the effect that no part of the plaintiff's land has been encroached upon by the respondents.

A perusal of the file reveals that both the learned courts below have returned concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants

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no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 30.11.2016, passed by the learned Addl. Civil Judge (Senior Division), Garhshankar as well as judgment and decree dated 19.01.2018, passed by the learned Additional District Judge, Hoshiarpur, respectively, which calls for interference by this Court in second appeal.

Accordingly, this appeal is dismissed in limine with no order as to costs.

July 18, 2019.

Sunil

**(LISA GILL)
JUDGE**

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