

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4309 of 2018 (O&M)
Date of Decision : 21.11.2019

Umed Singh @ Lala

.....Appellant

Versus

Smt. Chawli

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

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

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 25.04.2017 and as the appeal preferred against the said decree failed and was dismissed on 20.12.2017, the appellant-defendant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for possession of the suit property specifically the portion marked by letters EFCD and for mandatory injunction requiring the defendant to remove the illegal and unauthorized encroachments over the disputed property.

In brief, the case set out by her was that she was co-owner in possession of 1/8th share in a gair mumkin plot comprised in khasra No.26, measuring 1 kanal 12 marlas, situated within the *abadi deh* of village Samaspur Majra, Tehsil and District Jhajjar. The defendant had caused

encroachments over a portion of the suit property marked with letters EFCD by constructing a wall some time ago, and thus, was in unlawful possession of the said portion. For, the defendant intended to encroach upon even the other portion of the suit property, thus the suit.

In the written statement filed by the defendant it was pleaded that plaintiff had purchased 1/8th share in a land comprised in khasra No.26. In khasra No.289, after demarcation was carried out, defendant had constructed his house. Domestic electric meter was installed in the premises, therefore, defendant had not made any encroachment over the property comprised in khasra No.26, and thus, there was no occasion to handover possession.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that evidence led by the plaintiff showed that defendant had encroached upon a portion of the suit property. None less than defendant Umed Singh (DW3) conceded in his cross examination that site plan of the plaintiff, depicting the encroached area was correct and was in sync with the situation at the spot. The Court had appointed Naib Tehsildar as Local Commissioner, who submitted his report dated 03.08.2015, and clarified that defendant Umed Singh had indeed encroached upon a portion of the property comprised in khasra No.73/26. Area measuring 8 S.Y. shown in red colour in the site plan was encroached by constructing a house. No doubt, the defendant filed objections to the said report but those were rejected as the plea of the defendant that the report dated 03.08.2015, was prepared by Local

Commissioner at the house of the plaintiff, was erroneous. Defendant Umed Singh DW3 conceded in his cross-examination that he was present at the time, the suit property was demarcated. Further, even the attendance sheet appended with the report bears his signatures. Likewise, the plea that as per the report of the Commissioner defendant had encroached 8 S.Y, whereas plaintiff had encroached upon an area measuring 13 S.Y. out of the plot of the defendant was equally misconceived. Report of the Local Commissioner would show that owner of khasra No.289, that is the defendant, had left 13 S.Y of land towards khara No.73//26. Therefore, just because defendant had chosen to leave a portion of his land towards the house of the plaintiff upon which the plaintiff had never caused any encroachment or raised construction would not entitle the defendant to encroach a portion of the suit property that belonged to the plaintiff. Not just that after the Local Commissioner submitted his report and defendant had objections thereto he was given opportunity, vide order dated 16.11.2005, to move application for appointment of another Local Commissioner if so advised. However, the defendant did not choose to move any such application. Further, the defendant relied upon report marked-A to substantiate his plea that he had constructed his house in the year 1997, after getting his land demarcated. Although, the said report formed part of the record but only the photocopy thereof was produced, which was inadmissible in evidence. Even otherwise, his case was that he had constructed his house 15-20 years ago was vitiated as Karan Singh (DW2) conceded in his cross-examination that the wall qua which the

dispute had arisen was constructed 2.5 to 3 years earlier. That being so, the only and the inevitable conclusion that could be reached: the suit filed by the plaintiff deserves to be decreed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

21.11.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

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