

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

RSA No.5691 of 2018 (O&M)

Date of Decision : 26.09.2019

Ram Kishan (since deceased) through his LRs

.....Appellant

Versus

Kamal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

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

ARUN PALLI, J. (Oral)

The suit filed by the appellant/plaintiff was dismissed by the trial Court, vide judgment and decree dated 09.02.2016, as even the appeal preferred against the said decree failed and was dismissed on 18.05.2018, the appellant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for mandatory injunction directing the defendants to vacate the area encroached by them shown by letters CDE in red colour in the site plan and to hand over it's vacant peaceful possession. Further, restraining the defendants from encroaching or raising any sort of construction upon killa No.11 especially upon portion shown by letters BEF fully detailed in para No.1 of the plaint. Still further, if the defendants succeed in raising any construction or encroach upon any portion of killa No.11 during the pendency of the suit they be directed to clear and remove the said construction.

In defence, the defendants pleaded *inter alia* that site plan relied upon by the plaintiff did not tally with the actual and existing position at the spot. As per the correct site plan property marked by letters ABCDEF shown in green colour in the site plan was under the ownership and possession of defendant No.1, who had constructed a pucca house upon it several years ago. The property comprised in yellow colour marked by letters DEFG was under the ownership and possession of defendant No.4. Property marked by letters CGHI shown in blue colour was under the ownership and possession of the defendant No.3 and property marked by letters HIJKL shown in pink colour was owned and possessed by defendant No.2. And, the property shown in brown colour was rasta *share aam*.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that burden of proof was upon the plaintiff. To succeed he was required to prove the factum of encroachment over a specific portion of the suit land caused by the defendants. In fact, the jamabandi for the year 2008-09 Ex.P1/2 relied upon by the plaintiff to show his ownership over the suit land revealed that plaintiff was in fact the co-sharer in the suit property. As regards encroachment caused upon the suit land by the defendants the plaintiff relied upon a site plan, copy of which, was produced as Ex.P2. Concededly, the site plan Ex.P2, was prepared by Sh. Kashi Ram Dahiya (Draftsman). But the plaintiff failed to examine him, and thus, the site plan Ex.P2 remained unproved. Besides that there was only a self-serving statement of the plaintiff himself but no cogent evidence was led to

corroborate the same. Not only that, plaintiff also failed to give the clear and proper description as also the measurement of the area encroached or sought to be encroached by the defendants. Even on the site plan relied upon by the plaintiff, measurements of portion purport to have been encroached, were not mentioned. Therefore, in the absence of any clear description of the area encroached by the defendants the Court could not issue a vague order of injunction. Even otherwise, the argument that report of the Local Commissioner was *per se* admissible was rejected, for an analysis thereof revealed that Local Commissioner was appointed only to demarcate the suit land and report the existing state of affairs. Whereas the encroachment of a specific portion by the defendants over a suit land was required to be proved by leading cogent evidence. Once the plaintiff failed to prove any encroachment caused by the defendants even the alternative relief for possession qua killa No. 11 was not feasible.

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

26.09.2019

*Manoj Bhutani***(ARUN PALLI)**
JUDGEWhether speaking/reasoned
Whether reportableYes/No
Yes/No