

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.9840 of 2018 (O&M)
Date of Decision : 03.12.2019

Mehar Singh

.....Appellant

Versus

Bhagwan Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Y.P. Singla, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 19.02.2018 and as even the appeal preferred against the said decree failed and was dismissed on 26.07.2018, he 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 injunction restraining the defendants and their agents from causing any interference in his peaceful possession in the suit property comprised in khasra No.221, situated at village Tikri Bhoj Dharti, Tehsil Morni, District Panchkula.

In the written statement filed by the defendants claim of the plaintiff was denied. The site plan submitted by the plaintiff was alleged to be wrong and incorrect. Further, as per the demarcation report dated 23.10.1994, all the fruit bearing trees were in possession of Bhagwan Singh. In fact, plaintiff had no concern with the suit property, and thus, the

suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that vide order dated 11.02.2016, the application filed by counsel for the defendants for appointment of office Kanungo, Panchkula, as Local Commissioner, to carry out the demarcation of the suit land was allowed. Further, the said order revealed that application for appointment of Local Commissioner was not opposed by counsel for the plaintiff. The Office Kanungo submitted his report dated 20.02.2017 Ex.DW1/1, which revealed that portion depicted in red colour did not form part of khasra No.221 and was abutting the gauva, galgal and other trees. This aspect was required to be juxtaposed with the version of the plaintiff as set out in paragraph 3 of the plaint that site in dispute had gauva, galgal, shishsam trees etc.. The demarcation report dated 20.02.2017, was proved by Partap Chand (DW1) in his deposition. As regards the plea that no pucca points were identified before demarcation: suffice it to say that it was explained by the Local Commissioner that no pucca points were available as was reflected even in the report Ex.PX. Further, how and vide which method demarcation was carried out qua khasra Nos. 222 and 223 was explained in the report. It was the claim of plaintiff that even defendants had filed a suit for injunction against him qua the suit property and the said suit was dismissed vide judgment dated 31.05.2013 (Ex.P3). However, it was held that ownership of the land belonged to the Forest Department which was not impleaded as party and, for, the plaintiffs had failed to prove their possession over the suit property,

no injunction could be granted. But the fact remains that Ex.P3 would not *ipso facto* establish possession of the plaintiff over the suit property. The specific case set out by the plaintiff was that suit property formed part of khasra No.221 whereas he failed to adduce any cogent evidence to substantiate his claim. That being so, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed for lack of evidence.

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.

03.12.2019

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