

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

108

RSA-5458-2018 (O&M)
DATE OF DECISION: 06.02.2020

RAMPHAL

... Appellant (s)

Versus

RICHHPAL

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Mani Ram Verma, Advocate for the appellant(s).

ANUPINDER SINGH GREWAL, J. (ORAL)

The appellant-defendant has challenged the judgments and the decrees of the courts below, whereby the suit preferred by the respondent-plaintiff seeking possession of the land in dispute, has been decreed and the appeal thereagainst has been dismissed.

Learned counsel for the appellant-defendant contends that the allotment, which had been made in favour of the respondent-plaintiff by the Gram Panchayat, was subject to the condition that he would carry out construction within a period of one year, failing which the allotment would stand cancelled. The respondent-plaintiff had not made any construction within the stipulated period and the allotment was deemed to have been cancelled. He has also contended that the demarcation report was erroneous and, therefore, he had preferred an application for a fresh demarcation before the appellate court, which has been declined, without assigning any cogent reasons. Lastly, he has contended that the appellant-defendant had constructed a house over the disputed land 40 years ago and, therefore, he should be ousted therefrom.

Heard.

The respondent-plaintiff is stated to have been allotted 3 marlas plot (100 square yards) by the Gram Panchayat on 18.05.1994 in terms of its scheme for allotment of land to landless persons. PW-2 Suresh, who was the Ex-Sarpanch, has tendered his affidavit as Ex.PW-2/A and has supported the case of the respondent-plaintiff that allotment had indeed been made by the Gram Panchayat on 18.05.1994, while he was the Panch at that time and the respondent-plaintiff had raised boundary wall around the plot and had even installed a gate. The appellant-defendant had encroached upon the plot of the respondent-plaintiff to the extent of 7 ½ square yards. PW-3 Surender Kumar, Naib Tehsildar, has deposed that while he was posted as Kanungo, he had conducted demarcation of the land in dispute on the application preferred by the respondent-plaintiff on 20.09.2010. He had sent notices to the parties through the Patwari on 15.09.2010 and their objections had been taken into account before submission of the report. The attendance-sheet bears the signatures/thumb impressions of the persons who were present at the time of demarcation. In the demarcation report, the appellant-defendant was found to be in illegal possession of 7½ marlas of land. He had also prepared the site plan. A copy of the application moved by the respondent-plaintiff was produced as Ex.P-1, copy of notice as Ex.P-2, attendance sheet as Ex.P-3, demarcation report as Ex.P-4 and the site plan as Ex.P-5. The appellant-defendant did not challenge the demarcation report at any time prior to the submission of his application before the appellate court in this regard in the

year 2018. In the event of the appellant-defendant being aggrieved by the demarcation report, which had been prepared after giving due notice to him in the year 2010, it was incumbent upon him to challenge the same promptly and not after the suit filed by the respondent-plaintiff had been decreed.

Insofar as the submission of the learned counsel for the appellant-defendant that as the respondent-plaintiff did not carry out construction in terms of the conditions of the allotment the same stood resumed and the respondent-plaintiff would not be entitled to a decree of possession is concerned, I do not find any merit in it. As to whether the respondent-plaintiff did not carry out construction in terms of the allotment or whether he had defaulted therefrom that would be a matter which would be between the Gram Panchayat and the respondent-plaintiff. The appellant-defendant would not derive any benefit therefrom, especially when no evidence has been brought on record that the respondent-plaintiff did not comply with the terms and conditions of the allotment or any action had been taken against him by the Gram Panchayat.

The contention of the learned counsel for the appellant-defendant that the appellant-defendant had raised construction over the land in dispute over 4 decades ago can also not be accepted for the reason that no evidence has been brought on record with regard to the construction carried out by the appellant-defendant.

Consequently, I do not find any merit in this appeal which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

06.02.2020.

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