

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

RSA No. 605 of 2021 (O&M)

Date of decision: 13.09.2021

Sher Singh

...Appellant

Versus

Krishan and others

..Respondents

Coram: **Hon'ble Mr. Justice Arun Monga**

Present: Mr. Vishal Singh Chauhan, Legal Aid Counsel,
for the appellant.

(Presence marked through video conference).

Arun Monga, J. (oral)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 15.01.2016, as upheld by the learned First Appellate Court vide its judgment and decree dated 10.04.2019.

3. Briefly stated, facts as noticed by Courts below are that on demise of Tek Chand i.e. father of the plaintiff, the suit property i.e. Khasra No.253/20 was inherited by the plaintiff and since then he had been the exclusive owner in possession of the suit property. The defendant No.3 was the owner of the land situated on the southern side of the suit property. The defendant No.3 sold some portion of his property to defendants No. 1 and 2 and as such all the defendants became co-sharers in the property situated on the southern side of the suit property. Of late, the defendants had started

interfering in the peaceful possession of the plaintiff over the suit property.

The defendants had collected the building material on the site with an intent to raise construction thereupon and open the door towards the suit property.

The plaintiff approached and requested the defendants on several occasions not to interfere in his peaceful possession by way of opening the door towards the suit property or raising the construction on the suit property, but to no avail.

4. Based on the rival pleadings, following issues were framed:

1. *Whether the defendants are liable to be restrained from interfering in the peaceful possession of the plaintiff in any manner over the suit property as alleged? OPP*

2. *Whether the plaintiff is liable to raise construction over the suit property by way of mandatory injunction as alleged? OPP*

3. *Whether the suit is not maintainable in the present form? OPD*

4. *Whether the plaintiff has no locus standi to file the present suit: OPD*

5. *Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the Court? OPD*

6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*

7. *Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD*

8. *Whether the defendants are entitled for special costs under Section 35-A CPC? OPD*

9. *Relief."*

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, trial Court decided issues No.1 and 2 in favour of the defendants and issues No.3 to 8 against the defendants.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this Court.

8. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Relevant extract of judgment rendered by learned Appellate Court is as below:-

“13. After going through the submissions of both the counsels, now the first plea comes before this court as to “Whether land has been acquired or not?” It is clear that learned counsel for the appellants has drawn the attention of the court on documents Ex.PW7/A and Ex.PW7/B and submitted that khasra no. 253 has not been acquired till today. However, on the other hand learned counsels for the respondents have drawn the attention of the court on document Ex.D7 and thereafter, Ex.D9. They have submitted that these khasra nos. 247, 252, 253, 254 have already been acquired by the State Government by publishing the corrigendum. They have also drawn the attention of the court on documents Ex.D7 and Ex.D9 and submitted that from both these corrigendums, it is clear that khasra no. 253 has been acquired. Admittedly from the documents Ex.PW7/A and Ex. PW7/B, the land of khasra no. 253 was segregated but later on the same has been acquired through the corrigendum Ex.D7 and Ex.D9. Moreover, during the arguments, he has drawn the attention of the court on document of Deputy Commissioner and submitted that even as per the report of DC, this land has been merged in the road. This point has been corroborated by document Ex.P6 which is the report of LC vide which it is clear that the land of manure pits has been merged into the land of road. Hence, from over all situation, it is clear that as of now, the land has been merged into the road on account of acquiring by the State Government. Hence, this plea is decided against the appellant in favour of the respondents.

14. Now, the next plea comes before this court “Regarding ownership”. It is clear that even DW2 while appeared in the witness box is claiming that the appellant is shown as gair marusi but there is no document that appellant have ever been shown as owner of manure pits. The plea of ownership is lying in favour of the Gram Panchayat. Gram Panchayat is alleged to have been shown in the ownership. I perused jamabandi Ex.D2 and various other documents. All these documents are showing Gram Panchayat as owner of manure pits but the manure pits of appellant is alleged to had been situated in adjacent to the road but from the report Ex.P6, it is clear that road has been widened by merging the land of manure pits. Hence, the ownership over the manure pits is also not proved. Hence, this plea is decided against the appellant in favour of the respondents.

15. Now, the next plea comes before this Court “Regarding allotment”. Learned counsel for the appellant Sh. Balbir Singh has relied upon Section 23-A of Consolidation Act. He has also relied upon Section 16 (i) of Consolidation Act as well as on 1983 PLJ 76 (P&H) and submitted that land if reserved for manure pits, same is required to be handed over to the proprietors. I perused Section 16 (i) and Section 23-A of Consolidation and gone through the authority relied upon by learned counsel for the appellant. It is clear in this case that appellant has failed to prove that the land was not acquired by the State Government. Moreover, as per document Ex.P6 as well as documents Ex.D7 and Ex.D9, it is clear that land of khasra no. 253 has already been acquired by the State Government. Hence, authority relied upon by learned counsel for the appellant is not applicable.”

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending application/s, if any, shall also stand disposed of.

13. No order as to costs.

13.09.2021

Vandana/vs

(Arun Monga)
Judge

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No