

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

105

**RSA-883-2020 (O&M)
Date of decision: 05.12.2022**

Udmi RamAppellant
Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. DPS Joura, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

CM-2854-C-2020

For the reasons mentioned in the application, the same is allowed and delay of 37 days in filing the appeal is condoned.

RSA-883-2020

Suit filed by the appellant/plaintiff, for mandatory injunction in respect of the property detailed in para 1 of the judgment dated 28.08.2018 (hereinafter referred to as the 'suit property') for directing the respondents/defendants either to acquire the suit property under the provisions of Land Acquisition Act and to make payment of compensation in respect of the suit property to the appellant/plaintiff along with statutory benefits or to hand over vacant possession of the suit property to the appellant/plaintiff and also to pay occupation charges to the appellant/plaintiff, was dismissed by the learned Trial Court vide judgment and decree dated 28.08.2018. The appeal preferred by the appellant/plaintiff to assail the judgment and decree of the Trial Court met with same fate.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

The pleaded case of the plaintiff may be noticed as thus.

The plaintiff became owner of the suit property vide registered sale deed No.301 dated 13.05.2014. Mutation bearing No.22241 was sanctioned in favour of the plaintiff on the basis of the above mentioned sale deed. Vide demarcation report dated 23.07.2015, it came to light that the defendants had constructed the berm of the road as well as the boundary wall of the bus stand over a part of the suit property. The plaintiff was neither given any compensation nor the land of the plaintiff had been acquired under the relevant provisions of the Land Acquisition Act. The plaintiff claimed that he had a legal and valid right to get the aforesaid land vacated and also claimed usage and occupation charges for the period during which the defendants remained in possession of the above said land. The plaintiff claimed that despite a legal notice dated 09.11.2015 having been sent to the defendants by the plaintiff, no satisfactory reply had been received as a result of which he was left with no other option but to institute the suit in question.

The defendants while controverting the averments made in the plaint, submitted that as per jamabandi for the year 2012-13, the suit land was in the ownership and possession of a large number of co-sharers, therefore, the plaintiff could not claim himself to be the exclusive owner of the suit property. It was also submitted that the road in question was constructed by the defendant department more than 40 years ago i.e. much before 03.05.2014, when the plaintiff acquired ownership of the suit property and still further the bus stand in question too was constructed in the year 1994 i.e. prior to the plaintiff acquiring the suit property. It was also averred that the construction of the bus

stand was well within the knowledge of the previous owner of the suit property, Smt. Santosh and who had admittedly never raised any objection with respect to the aforementioned constructions. It was still further submitted that as per record, for the construction of the bus stand, land measuring 55 kanals 16 marlas was acquired and handed over to the authorities for which compensation also stood paid to the owners of the land, as per rules. Therefore, it was urged that the suit was liable to be dismissed.

Both the Courts below dismissed the suit of the plaintiff on the ground that once the previous owners of the suit land did not raise any objection over the construction of the bus stand on the suit property, the plaintiff who had thereafter stepped into the shoes of the previous owners could not be allowed to raise a plea of encroachment on it.

Learned counsel appearing for the plaintiff has submitted that both the Courts below failed to appreciate that the factum of ownership of the plaintiff over the suit property had gone undisputed, therefore, both the Courts below had fallen into error while dismissing the suit only on the ground that the plaintiff had failed to prove ownership over the specific portion of land. Learned counsel has vehemently argued that the Courts below failed to consider the demarcation report (Ex.P4) which clearly reflected the ownership of the plaintiff over the encroached land. Furthermore, learned counsel has submitted that the Courts below erroneously held that the plaintiff was well aware and had due knowledge while purchasing the suit property that there existed a bus stand therein. Learned counsel has asserted that

the Courts below failed to appreciate that the plaintiff learnt about the encroachment only when the demarcation was carried out, and which was done after he had purchased the suit property.

I have heard learned counsel and perused the relevant material on record.

The entire weight of the submissions made by the learned counsel rests upon the demarcation report (Ex.P4). A perusal of Ex.P4 shows that it has been prepared in the absence of one of the parties at the spot during demarcation, therefore, it has been prepared in contravention of the High Court Rules and Orders, Vol. 1, Chapter 1-M, Clause VI of Rule 4 of Part(i) (Procedure in Hadd Shikkni cases) and, hence, cannot be relied upon.

Still further, the sale deed No.301 vide which the plaintiff is asserting his ownership over the suit property shows that only share in khewat No.172 has been purchased by the plaintiff and not any specific killa number.

On being pointedly asked, learned counsel for the plaintiff failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality.

As a sequel to the above, this Court thus does not find any error in the concurrent findings recorded by the Courts below. Accordingly, the instant appeal being devoid of any merit is dismissed.

05.12.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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