

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

RSA-1424-2022 (O&M)
Date of decision : 15.09.2022

Shrikant

... Appellant(s)

Versus

Usha Devi

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Naresh Kaushik, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

The present appeal has been preferred against the judgments and decrees passed by the Courts below decreeing the suit filed by the plaintiff-respondent for possession, permanent injunction as well as the mandatory injunction.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed the present suit for possession of portion having area measuring 15.87 sq. yds out of plot measuring 6 marlas being 6/19 share of Khasra No.42, Killa No.3/2/3 (0-19) situated at Village Bhapra, Tehsil Samalkha, District Panipat and for recovery of use and occupation of the said plot portion @ Rs.4,000/- per month from July 2012 to the date of actual physical possession of the said portion. It was averred in the plaint that the plaintiff-respondent was the owner of the suit property vide sale deed bearing Vasika No.1714 dated 12.07.2012 registered in the office of the Sub Registrar, Samalkha. After purchasing the suit plot, the plaintiff-

respondent got measurement of the plot done at the spot and it was found that the defendant-appellant had encroached upon a portion measuring 15.87 sq. yds. marked by letters ABCD out of the suit property. The plaintiff-respondent requested the defendant-appellant to handover vacant possession, however, the defendant-appellant lingered on the issue on one pretext or the other. In the month of February 2017, the defendant-appellant started proclaiming that the plaintiff-respondent had not got done the demarcation of the suit property and he had no faith on the claim of the plaintiff-respondent without demarcation of the suit plot. Accordingly, the plaintiff-respondent and her husband got demarcation of the suit plot done from the office of Naib Tehsildar-cum-Assistant Collector 2nd Grade, Samalkha on 12.03.2017 according to which the defendant-appellant was found to have encroached upon the portion of Khasra No.42//3/2/3 measuring 15.87 sq. yds. i.e. the suit property. Hence, the present suit. The suit was contested by the defendant-appellant on the ground that the plaintiff-respondent had not approached the Court with clean hands and had concealed the material facts from the Court. Preliminary objections were raised that the mother of the defendant-appellant had purchased land measuring 7 marlas i.e. 210 sq. yds which is 7/101 share out of 5 kanals 1 marla comprised in Khata No.99/118, Killa No.42/9/1 (5-1) situated at Bhapra, District Panipat vide sale deed bearing Vasika No.1099 dated 11.10.1990 and after the death of his mother, mutation of inheritance was sanctioned vide mutation No.1984 dated 27.01.2000 in his favour. It was further averred that he had raised construction over the same and was residing there with his family members

without interruption. The pleas of the suit not being properly valued, the Court not having jurisdiction and the suit being bad for mis-joinder and non-joinder of necessary parties, were also raised.

On the basis of the pleadings of the parties, the following issues were framed :

- “1. Whether the plaintiff is entitled to the reliefs as prayed for ? OPP*
- 2. Whether the plaintiff has not affixed the proper court fees ? OPD*
- 3. Whether the plaintiff has suppressed true and material facts from the court ? OPD*
- 4. Whether the present suit is not maintainable ? OPD*
- 5. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD*
- 6. Whether the plaintiff is estopped by her own act and conduct from filing the present suit ? OPD*
- 7. Whether the Civil Court has no jurisdiction to try and entertain the present suit ? OPD*
- 8. Relief”*

The Trial Court, while decreeing the suit vide judgment and decree dated 06.11.2019, returned the following finding :

- “13. The present suit is for possession with regard to the alleged encroachment by the defendant measuring 15.87*

sq. yds, in the total area of 180 sq. yds. The plaintiff has proved her ownership over the suit land in view of Ex. P1 placed on file. Now the factum of encroachment by the defendant need to be proved by the plaintiff. For that matter, the plaintiff has placed on file the demarcation report Ex. PW3/A on the case file clearly shows the encroachment over the land belonging to the plaintiff. One LC was appointed by the order of the court who also demarcated the land and placed on file the demarcation report wherein also the encroachment over 15.68 sq. yds land has been found by the defendant over the property belonging to the plaintiff. In both these reports, it is very clearly stated by the revenue officials that the defendant has encroached over the land belonging to the plaintiff. Meaning thereby, the factum of encroachment over the land 15.68 sq. yds is also proved on the case file in view of the report of revenue officials called in by the court.”

Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-appellant which appeal was also dismissed vide the impugned judgment and decree dated 09.03.2022.

Learned counsel for the defendant-appellant would contend that the plaintiff-respondent had purchased the property in 2012 and the suit had been filed in the year 2017 and, hence, the same was barred by law of

limitation. It is further the contention of learned counsel that no encroachment has been made by the defendant-appellant and that he has been in peaceful possession of the property since 1990.

Heard.

In the present case both the Courts below have returned concurrent findings of fact and found that the defendant-appellant was in illegal possession of the suit property based on the report of the Local Commissioner qua which no objections were filed by the defendant-appellant. It is further come in the judgment and decree passed by the lower Appellate Court that no demarcation report was placed on the record by the defendant-appellant to show that no encroachment had been made by him. The argument of learned counsel for the defendant-appellant that the suit is barred by law of limitation was a point which was neither raised in the pleadings nor at the time of arguments before both the Courts below. It is trite that the question of limitation is a mixed question of law and fact. Even before this Court, learned counsel for the defendant-appellant has not been able to convince as to how the suit is barred by limitation. As per the averments made in para 9 of the plaint, the defendant-appellant was requested to vacate the encroached portion and on 31.03.2017 the defendant-appellant refused to vacate the said portion. In response to para 9 of the plaint it has simply been stated that the Court has no jurisdiction to try the case. It is trite that simpliciter denial, in the absence of any categorical denial to the factual averments made in the plaint, would be deemed to be admitted.

In view of the concurrent findings of facts returned by both the Courts below, I do not find any merit in the present appeal. No question of law, much less, substantial question of law, arises in the present appeal. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.09.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO