

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

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**RSA-314-2022 (O&M)  
Date of decision: 25.04.2022**

Bhura alias Akhlak and others

.....Appellants

Versus

Ramjan

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Manoj Kaushik, Advocate for the appellants.

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**MANJARI NEHRU KAUL, J. (ORAL)**

The respondent-plaintiff instituted a suit for possession and permanent injunction in respect of residential house ABCD shown in the site plan attached with the plaint, situated within the Abadi Deh/Lal Dora of village Ghudwali, Tehsil Hathin, District Palwal. The Court of learned District Judge, Palwal upheld judgment and decree of the learned trial Court whereby the suit of the respondent-plaintiff was decreed with cost and he was held entitled to the relief of possession and permanent injunction in respect of the suit property.

The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

It was pleaded by the plaintiff in the suit in question that after constructing two rooms and a boundary wall etc. on the suit property, he and his family had been living there peacefully and continuously without any interruption. The plaintiff's son Mustak solemnized love marriage with the sister of the defendants. Since the defendants were averse to this matrimonial alliance, they started extending threats to the plaintiff and his family due to which they left

the suit property and moved to Rajasthan. During their absence, the defendants took illegal possession of the suit property including their household articles. Resultantly, the daughter-in-law of the plaintiff registered FIR No.61 dated 26.09.2014 against the defendants.

On being put to notice, the defendants in their written statement denied the averments made in the plaint. Rather it was submitted that the defendants had purchased the suit property along with other properties shown in letters ABCDEF in the site plan attached with their written statement (consisting of six rooms, one chhappar/bangla, latrine, bathroom etc.) in the year 2000 and ever since then they had been owner in possession of the same. It was also submitted that the defendants had got registered FIR No.4 dated 03.08.2014 under Section 365, 506 and 34 IPC at Police Station Bahin against the plaintiff and his family as their sister had been kidnapped by the son of the plaintiff.

After the issues had been framed, both the parties led their respective evidence. Both the Courts below concurrently arrived at a finding that though the case of the defendants was that they had purchased the suit property from the plaintiff in the year 2000 and it was also included in the site plan (Ex.D-1) produced by the defendants, however, no documentary evidence was produced by them in support thereof.

Learned counsel for the appellants-defendants has reiterated their submissions and the stand taken by them before the Courts below. It has been argued that the dimensions of the house in the dispute have not been disclosed in the plaint by the plaintiff. It has also

been submitted that the plaintiff failed to prove that they had left the village and moved to Rajasthan. He submits that the plaintiff has even failed to prove that he is owner in possession of the suit property. He has further submitted that the houses of the parties are adjoining each other and nothing has been brought on record from which it could be even remotely inferred that the defendants have encroached upon the land of the plaintiff. He further submits that the Courts below wrongly shifted the onus on the defendants to prove that they are owners in possession of the suit property.

I have heard learned counsel for the appellants and perused the impugned judgment and decree.

Admittedly, the suit property is situated within the *abadi deh/lal dora* of village Ghudwali, Tehsil Hathin, District Palwal. As no official record of ownership is maintained qua the land situated within the *lal dora*, the ownership of land depends upon which party is in possession. Since the plaintiff claimed himself to be owner in possession of the suit property, the onus was upon him to prove his possession prior to the alleged encroachment by the defendants.

In support of his case, the plaintiff examined PW-1 Ashu, PW-2 Noor Mohd. and lastly the petitioner himself stepped into the witness box as PW-3. He also produced site plan Ex.P-1 on record to prove his possession. All the above said witnesses deposed on similar lines as per the pleaded case of the plaintiff, thus the onus shifted on the defendants to rebut the case of the plaintiff.

From a perusal of the impugned judgments and decrees, it stands revealed that it is the pleaded case of the defendants that the suit

property was purchased by them from the plaintiff along with some other properties belonging to other persons in the year 2000. Thereafter, the defendants allegedly raised construction on the suit property. In support, however, the defendants failed to bring on record any documentary evidence qua the purchase of the suit property from the plaintiff. Instead, reliance was placed upon only the site plan Ex.D-1 qua the existing state of affairs over the suit property and other properties, allegedly purchased by them. They also produced an agreement to sell Mark 'A' qua some other property purchased by the defendants from one Kishan Singh son of Bhurmal on 03.10.2000. However, the boundaries detailed in Mark 'A' did not tally with the boundaries of the property shown in the site plan Ex.D-1 produced by the defendants. This was the only evidence produced by the defendants and that too qua the existing state of affairs over the suit property. No doubt, it was admitted by PW-1 Ashu that the house of the defendants was on the northern side of his plot which also found reflected in the site plan Ex.D-1 and that the property had been purchased from some Jallu, Zaleba, Kishan Singh, Chhaju and Jumma but in the absence of any documentary evidence it could not be said to be a sufficient enough proof that the plaintiff had sold the suit property to the defendants.

Furthermore, Jamshed while stepping into the witness box as DW-2 yet again conceded that he had neither seen any document with regard to the sale of the suit property nor was he able to depose qua the amount of sale consideration paid to the plaintiff at the time of the aforementioned sale in the year 2000. Rather, this witness was vague during his deposition before the trial Court, because at first he

stated that the sale consideration was just a couple of hundred of rupees and then subsequently stated that rupees thousand or two may have been paid to the plaintiff.

Upon being pointedly asked, learned counsel for the defendants failed to refer to anything on record to show that the conclusions so arrived at by the Courts below were either contrary to the record or suffered from any material illegality. Still further, no question of law, much less, substantive arises for consideration in the present appeal. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

25.04.2022

Vinay

(MANJARI NEHRU KAUL)  
JUDGE

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