

RSA-3538-2011 (O&M)

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

RSA-3538-2011 (O&M)

Reserved on : November 30, 2022

Pronounced on : December 07, 2022

Pardeep and others

... Appellants

Versus

Gobind Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sudhanshu Makkar, Advocate for the appellants.

Mr. Sandeep Kumar Yadav, Advocate for the respondent.

DEEPAK GUPTA, J.

Defendants of the case are in this appeal against the concurrent findings of the Court below, whereby suit of the plaintiff-respondent for decree for perpetual injunction has been decreed.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the learned Trial Court.

3. According to plaintiff-Gobind Ram (now respondent), he is owner in possession of a residential house as shown by letters ABCDEF in the attached site plan, situated at street No.1 Dhani Hanuman, Nai Basti, Hanuman Gate, Jonpal Bhiwani. He had purchased the plot underneath the said house vide sale deed dated 16.11.1969 (Ex.P1). He raised construction in the same year and also got an electricity connection. It was alleged that despite having no concern whatsoever with his house, defendants Pardeep and others (now appellants) were intending to grab his house, particularly the portion shown by letters

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BCDE in the site plan. With these allegations, plaintiff prayed for a decree of perpetual injunction to restrain the defendants from interfering in any part of his house, more particularly in the portion BCDE.

4. Defendants in the written statement, disputed the correctness of the site plan relied upon by the plaintiff. According to them, portion BCDE as shown in the site plan of the plaintiff, is in fact southern portion of their (defendants' house) and that under the garb of the present suit, plaintiff wanted to take possession thereof. With this stand and controverting other averments of the plaint, defendants prayed for dismissal of the suit.

5. No rejoinder was filed. Following issues were framed:-

- 1. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
- 2. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 3. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD*
- 4. Relief.”*

6. After taking evidence produced by both the parties, learned Trial Court held plaintiff to be owner in possession of the house in dispute and by way of judgment dated 22.01.2010 granted decree of perpetual injunction in his favour. In the appeal filed by the defendants, the First Appellate Court affirmed the findings of the Trial Court, vide judgment dated 26.04.2011.

7. Against the aforesaid concurrent findings, defendants are in this appeal.

8. It is contended by learned counsel that the reasoning given by courts below to decree the suit is judgment dated 10.12.2004 (copy

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Ex.P-2) titled as “*Gobind Ram vs Municipal Committee, Bhiwani*”, wherein defendants of this case were not a party and so, it is not binding on them. Not only this, in the decree sheet Ex.P-3 prepared in that case, plaintiff had shown his land and the house of the Pradeep (one of the present defendants) in the eastern side of his house but in the site plan Ex.P4 relied in this case, he has shown a street on the eastern side. Thus, boundaries shown in the two litigations are different. Learned counsel further contends that site plan Ex.P4 relied upon by the plaintiff is not proved, as PW3 admitted during his cross-examination that he had prepared the same as per instructions of the plaintiff without inspecting the spot. Learned counsel further contends that during pendency of the suit, defendants had moved an application for appointment of Local Commissioner so as to prepare the map of the disputed site so as to show the factual position. In reply to that application filed by plaintiff on 31.01.2006, the stand was taken by the plaintiff that during pendency of the suit, defendants had illegally and forcibly encroached upon the disputed portion BCDE as shown in the site plan and had raised unauthorized construction thereon. However, in the execution petition filed later on by the plaintiff in October, 2011, he claimed that possession of the disputed property as shown by letters BCDE had been taken by the defendants-JDs after decision of the Appellate Court, which is quiet contrary to the stand earlier taken by the plaintiff. Submitting that Courts below failed to appreciate the evidence in right perspective, prayer is made to set aside the impugned judgments dismissing the suit of the plaintiff.

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9 Refuted the aforesaid contentions, it is submitted by learned counsel for the respondent-plaintiff that this appeal is against the concurrent findings and that no substantial question of law is involved so as to make interference by this Court. He further submits that evidence on record has been correctly appreciated by the Courts below, as plaintiff was found to be owner in possession of the suit property on the basis of sale deed Ex.P1 in his favour.

10. I have considered submissions of both the sides and have perused the record carefully.

11. Ex. P-1 is the sale deed dated 16.11.1969, whereby plaintiff purchased the plot measuring 52.5 haath x 27 haath from one Chhaju Ram. On conversion, the measurements works out of 79' x 41'. The boundaries of the plot as purchased by plaintiff vide Ex.P1 are as under:-

East – Land of vendor (i.e. Chhaju Ram)

West – Street

North – Kanhiyalal

South – Street

12. From the aforesaid sale deed Ex.P-1 relied by the plaintiff, it is clear that the plot purchased by him, on which he later on raised construction, had land of vendor Chhaju Ram on the eastern site. More particularly, it is liable to be noted that there is no street/passage on the eastern side of the property purchased by him.

13. Ex. P2 is copy of judgment dated 10.12.2004 passed in Civil Suit No.265 of 2000, titled as *Gobind Ram vs Municipal Committee, Bhiwani*, which reveals that plaintiff of this case Gobind Ram alleged threat of demolition of his house from the officials of Municipal Council, Bhiwani. Suit for perpetual injunction filed by him, was decreed. Ex.P3 is

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the decree sheet prepared in that case, in which the property, which was subject matter of judgment Ex.P2 is detailed. The boundaries of his house given by the plaintiff in that case are as under:

East – Land of plaintiff and house of Pardeep

West – Street

North – *Ghair* of Kanhiyalal

South – Street

14. It is clear from Ex.P3 that in the suit filed in 2000 decreed in his favour in 2004 against Municipal Committee, plaintiff had shown house of Pardeep (defendant of this case) on the eastern side of his house. Again, it may be noticed that no street was shown by the plaintiff on the eastern side of his house. Although, defendants of the present case being not a party to Ex.P2 and P3, still the said documents relied by the plaintiff, are binding upon him, though these are not binding upon the defendants of this case.

15. Plaintiff also relied upon a site plan purported to be prepared by Shri K.P. Parmar, draftsman. In his affidavit Ex.Pw2/A, plaintiff Gobind Ram referred the site plan as Ex.P4, though no such exhibit is marked on the site plan available at page 151 of the Trial Court record. K.P. Parmar, draftsman examined as PW3 did not prove any particular site plan. He simply stated that site plan attached with the plaint belongs to the house of the plaintiff-Gobind Ram and the same was prepared by him (KP Parmar) as per instructions of the plaintiff. During cross-examination, he candidly admitted that he prepared the site plan by sitting in the Court, as per the instructions of the plaintiff, without visiting the spot. It is, thus, clear that site plan relied upon by the plaintiff

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is not proved in accordance with law, as it does not depict the correct position of the spot, having been prepared by the draftsman while sitting in the Court complex and without visiting the spot.

16. Interestingly in the said site plan relied by the plaintiff (referred by the Courts below as Ex.P4), plaintiff has shown street on the eastern side of the property ABCDE, alleged by him to be owned and possessed by him. It has already been noted that neither in the sale deed Ex.P1 nor in the earlier litigation against Municipal Committee, Bhiwani, plaintiff had shown any street on the eastern side of his house. Coupled with the fact that site plan Ex.P4 is not proved on record as per law, there can be no hesitation to conclude that both the Courts below clearly fell in error in holding the plaintiff to be owner in possession of the disputed property, more particularly portion BCDE as shown by red colour.

17. Apart from all above, it is important to notice that suit was filed by the plaintiff on 05.07.2005. On 08.12.2005, defendants of the case moved an application for appointment of the Local Commissioner so as to prepare the map of the disputed property and show the factual position. In the reply dated 30.01.2006 to this application filed by the plaintiff, following stand was taken by him:-

“that during pendency of suit the defendants have illegally and forcibly encroached upon the portion shown with letters BCDE in the site plan attached with the plaint and raised unauthorized construction. -----”

18. As PW2, plaintiff Gobind Ram stated during his cross-examination that aforesaid portion i.e. BCDE was encroached upon by the defendants on or about 14/15.09.2005. Issues in this case were framed

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on 26.04.2006. The case remained pending till January, 2010, when it was decreed by the Trial Court. During this entire period, plaintiff never got his plaint amended so as to seek the relief of mandatory injunction or decree for possession. Not only this, after decision by the First Appellate Court on 26.04.2011, the plaintiff filed an execution in October, 2011, wherein he pleaded as under:

“judgment debtors have been restrained from interfering and taking possession of the property in dispute described in judgment and decree with letters ABCDEF but they have illegally, knowingly, deliberately and forcibly have taken the possession of the part of the property in dispute shown with letters BCDE, in the judgment and decree and site plan after decision of the Appellate Court dated 22.01.2010. It is, therefore, prayed for restoration of possession in favour of DH may kindly be ordered”.

19. It is, thus, evident that in the reply dated 30.01.2006 to the application for appointment of Local Commissioner, stand was taken by the plaintiff that defendants had encroached upon the portion BCDE and in his statement as PW2, plaintiff stated the said invasion to have been made by defendants on 14/15.09.2005 but in the execution filed in October, 2011, he alleged his forcible dispossession of disputed portion BCDE after decision of the appeal i.e. April, 2011.

20. in view of the aforesaid contradictory stand, the case of the plaintiff-respondent is absolutely not believable. Both the Court below clearly fell in error in believing the evidence of the plaintiff in the aforesaid circumstances. In fact, plaintiff utterly failed to prove his possession over the disputed portion BCDE as shown in site plan Ex.P4 as on the date of filing of suit. His contradictory stand as to when he was allegedly dispossessed from the disputed portion, make his entire case

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unreliable, more particularly when it is established by his own evidence that in the sale deed Ex.P1 and decree sheet Ex.P3 of earlier litigation, he had specifically shown the house of defendant Pardeep on the eastern side of the house and had not pleaded any street on the eastern side of his house, which is now shown in site plan Ex.P4.

21. It has been held by the Hon'ble Supreme Court of India in case of ***“Anathula Sudhakar vs P. Buchi Reddy (Dead) By LRs & Ors.”*** reported as 2008(2) R.C.R. (Civil)879 that in a suit for permanent injunction restraining the defendant from interfering with his possession, plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession.

22. In this case, plaintiff utterly failed to prove his possession on the disputed portion.

23. As far as the contention of the plaintiff-respondent to the effect that no substantial question of law is involved in this appeal, it has no merit. In ***“P. Chandrasekharan and Others vs S. Kanakarajan & Others”*** reported as 2007(3) RCR(Civil) 543, it has been held by the Hon'ble Supreme Court that though as a general rule, High Court will not interfere with the concurrent findings of the Courts below, but it is not an absolute rule. Some of the well recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

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24. In the present case, the discussion as made before clearly reveal that the Courts below have misread and drawn wrong inferences from the evidence placed on record.

25. Consequently, the impugned judgments passed by both the Courts below are hereby set aside. The appeal is accepted with the costs. The suit of the plaintiff-respondent is dismissed with cost.

December 07, 2022
sarita

(DEEPAK GUPTA)
JUDGE

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