

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

**RSA-3814-2012 (O&M)
Date of decision: 25.07.2022**

Lakhbir Singh

...Appellant

Versus

Nasib Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Eliza Gupta, Advocate
for the appellant.

Mr. Rishabh Garg, Advocate for
Mr. Aayush Gupta, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Challenge in this appeal is to the judgment and decree dated 02.12.2009 passed by the trial Court, vide which the suit filed by the appellant/plaintiff, stating that the appellant/plaintiff is owner in possession of land in khasra No. 1145, which is abutting the land of the defendants in Khasra Nos. 1165/1166 and the defendants are trying to raise construction of a wall over the land of the appellant/plaintiff, was dismissed as well as to the judgment passed by the lower appellate Court, vide which the appeal filed by the appellant was also dismissed.

The respondents/defendants filed the written statement and disputed the raising of construction, however, it was not disputed that the appellant/plaintiff is the owner of land in Khasra No. 1145. The trial Court framed the following two issues, which were contested by the parties:

1. Whether the plaintiff is entitled to decree of permanent injunction restraining the defendants from interfering or disturbing the peaceful possession of

the plaintiff over the suit property as prayed for? OPP

2. Whether the plaintiff is entitled to permanent injunction restraining the defendants from raising boundary wall at point B by encroaching the suit land as prayed for? OPP

While deciding issue No. 1, both the Courts below recorded the following observations as observed in appellate Court's judgment:

“12. After hearing the rival contentions of both the learned counsel for the parties and have gone through the file with their able assistance.

13. Perusal of file reveals that the plaintiff/appellant filed the present suit for permanent injunction restraining the defendants from interfering into his peaceful possession over the suit land in khasra no. 1145 khewat No.768, Khatauni No.1044 and he is claiming himself to be owner of the suit property but when the defendants appeared and filed their written statement, they categorically mentioned in their written statement that they have no concern or interest in the property comprised in khasra No.1145 but their land comprised in khasra No.1165 and 1166 which is adjoining to khasra No.1145 and they wanted to enclose their land by raising boundary wall. The plaintiff/ appellant to prove his case has examined PW-1 Pawandeep Singh who in his examination in chief supported the case of the plaintiff/appellant but in his cross examination, he had admitted that no demarcation with respect to khasra no. 1145, 1165 and 1166 was obtained. He even admitted that he cannot tell the dimension of khasra No.1145. The plaintiff appellant also examined Baldev Singh as PW-2 who also admitted in his cross examination that there are no any fixed point in the fields and they have measured their land from butts and he also admitted in his cross

examination that he cannot tell the measurement of land in dispute. The plaintiff/appellant himself stepped into witness box as PW-3 who also in his cross examination stated that he has no revenue record depicting the dimension of land and no demarcation from the revenue authorities has been got conducted by him and he even does not know as to whom the site plan has been prepared by him and he cannot produce any revenue record to prove the dimension of the property. On the other hand, the defendant examined Baljit Singh as DW-1 who has categorically stated in his examination in chief that no portion of the boundary has been raised on any portion of land belonging to the plaintiff/ appellant or any other person on any side and they neither have encroached nor they have any intention to encroach upon any portion of the land belonging to the plaintiff/ appellant. He further stated that the defendants have every right to raise their boundary wall on their own property. So as per the evidence brought on the file by both the parties, it is established on the file that the demarcation with regard to khasra no.1145 has not been got conducted by the plaintiff and the injunction with regard to the land falling in Khasra no.1145 could be granted only when the specific boundaries of the land falling in this khasra number would have been established on record. Plaintiff was required to establish that the land comprised in khasta no. 1145 has been duly demarcated either by the consent of the party or through the revenue department as per law. Both the witnesses examined by him and even he himself has admitted that no demarcation has been conducted from the revenue authority. No doubt the land in dispute adjoins to khasra no.1165 and 1166 which is owned by defendants and the plaintiff was required to get his land demarcated from

the revenue authority. So as per the provisions of 41 (h) of the specific Relief Act, no injunction can be granted where equal efficacious remedy is available to the parties whereas the defendants have categorically stated that they have no connection with the land comprised in khasra No.1145, then the plaintiff was having equally efficacious remedy getting the land demarcated from the revenue authority.”

Learned counsel for the appellant has argued that as per the plaint and the evidence, it is established that the appellant is owner of land in Khasra No. 1145, which is not disputed by the respondents/defendants in their written statement in corresponding para No. 2, however, learned counsel for the appellant could not dispute that both the Courts below have dismissed the suit on the premise that the appellant/plaintiff has failed to prove by way of leading any evidence that before filing the suit, any demarcation was got conducted or that the defendants have encroached or raised any construction over the land of the appellant/plaintiff, therefore, in the absence of the same, no relief of permanent injunction can be granted. It is also held that the appellant has efficacious remedy as per Section 41(h) of the Specific Relief Act to get the land demarcated from the revenue authorities.

Learned counsel for the respondents/defendants has opposed the prayer of the appellant on the ground that the defendants are neither the owner in possession of land in Khasra No. 1145 nor they have raised any construction over the suit property.

After hearing learned counsel for the parties and going through the concurrent judgments and decree of both the Courts below, finding that the apellant/plaintiff has prayed for a decree of permanent injunction

against the respondents/defendants on the ground that they are trying to interfere with the possession of appellant over the land in Khasra No. 1145, which he could not prove by leading any evidence and also finding that no substantial question of law is involved in the present appeal, the same is dismissed.

25.07.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No