

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

RSA No.601 of 2002 (O&M)

Date of Decision :03.05.2023

Ram Mehar (Since deceased) through his LR's and another

.....Appellants

Versus

Smt. Phulwati and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present : Mr. S.P.Chahar, Advocate for the appellants.

None for the respondents.

ARUN PALLI, J. (Oral)

Suit filed by the appellants-plaintiffs for possession by demolishing the construction raised on the suit land, situated within *abadi deh* of village Kheri Khumar, was dismissed by the trial Court, vide judgment and decree dated 23.05.1997. For, even the appeal preferred against the said decree failed and was dismissed on 28.09.2001, the appellants-plaintiffs are before this Court in Regular Second Appeal.

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

In brief, the case set out by the plaintiffs was that they were owners in possession of plot Nos. 370 and 214. And the defendants had raised construction upon a part of the area of the said two plots and occupied the same. Per the demarcation report, the defendants were found to be in illegal possession on the encroached portion. The encroachment or the portion that was unauthorizedly occupied by the

defendants was depicted in the plaint as thus: an area measuring 22' X 84'

comprised in plot No.370 shown by letters ABCD, bounded as:-

East : Plot plaintiff
West: Plot Sis Ram etc. defendant No.1 to 5
North: Rasta/firni
South: Plot Sis Ram defendant Nos. 1 to 5.

An area measuring 55' X 2' comprised in plot No.370 shown by letters I.H, bounded as:

East : Gher Umrave, Hoshyar
West: Plot plaintiff
North: Rasta/firni
South: Plot plaintiff

As regards plot No.214, area measuring 10' x 148-½ shown by letters CFIK bounded as:

East : Plot plaintiff
West: Plot Sis Ram
North: Plot plaintiff
South: Rasta/firni

Further, an area measuring 2' X 143' comprised in plot No.214 shown by letters GH, bounded as:-

East : Gher of Kartar defendant
West: Gher Sis Ram defendant
North: Plot plaintiff
South: Rasta/firni

Even though the plaintiffs requested the defendants to handover the vacant possession of the encroached portion, as depicted above, after demolishing the construction, raised by them, but to no avail. Thus the suit.

In the written statement filed by defendants No.1 to 5, ownership of the plaintiffs qua plot Nos.370 and 214 was not disputed.

However, it was pleaded that the disputed portion marked by letters **ABCD** was not part of plot No.370, but a part of *gher*, bearing No.369, owned and possessed by the defendants, for the last 55-56 years. As regards the portion, marked by letters **CFE**, it was denied if it formed part of plot No.214, for it comprised in plot No.213 and was part of the houses constructed by the defendants. Hence, the suit was liable to be dismissed.

In a separate written statement filed by defendants No.6 to 17, it was pleaded that house of defendant No.17 existed towards the eastern side of plot No.370. Likewise, there were plots of defendants No.6 to 16, towards the eastern side of plot No.214. And, the pucca wall raised by the defendants existed at site for the past several years.

Upon a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that to substantiate their claim, plaintiffs had relied upon two demarcation reports: Ex.PW3/A and Ex.PW4/A. As regards report Ex.PW3/A, proved by Krishan (PW3), it was observed that the same could not be looked into, for it was not prepared in the presence of the parties but prior to the institution of the suit. Further, the said report would not show any encroachment upon plot Nos. 370 and 214, either by defendants No.1 to 5 or by defendants No.6 to 17. As per demarcation report (Ex.PW4/A), submitted by Raghubir Singh Patwari (PW4), appointed by the Court, no encroachment was found to have been carried out by defendants No.1 to 4, who owned the adjacent plot No.213. However, a portion of plot Nos. 370 and 214 was found to have been encroached by defendants No.6 to 17. It was observed

that previously the plaintiffs had filed a suit, against defendants No.5 to 17, in the year 1973, for possession, regarding portion of plot No.214. And, from perusal of the site plan (Ex.DW6/C), produced in the said proceedings, it was apparent that plaintiffs themselves had shown the houses of the defendants towards the western side of plot Nos.370 and 214. Thus, it was well within the knowledge of the plaintiffs that defendants No.1 to 4 were owners in possession of their houses that adjoined the western side of plot Nos.214 and 370. And, even otherwise, the suit filed by the plaintiffs for possession against the said defendants was apparently time barred. As regards claim of the plaintiffs qua defendants No.6 to 17, the specific stand set out by the said defendants was that they had constructed the houses upon their plots that adjoined plot Nos. 370 and 214, on the eastern side. Those, however, were in existence for over 24-25 years. Further, the plaintiffs had even earlier filed a suit against defendants namely Ram Singh, Kartar, Umrav sons of Dungar, Saraswai wd/o Sultan Kailash, Janki, and Parbati, which was dismissed on 26.11.1973. Further, the demarcation report (Ex.PW4/A) which showed that a portion of plot Nos.214 and 370 was encroached upon by them could not be looked into either. For, no such demarcation was carried out in the presence of defendants No.6 to 17. Raghubir Singh (PW4), Local Commissioner, conceded in his cross-examination that no notice was served upon defendants No.6 to 17 or upon their counsels before demarcation was carried out at site. Concededly, the spot memo prepared by the Local Commissioner did not bear the signatures of either

of the defendants or their counsels. Accordingly, it was concluded that suit of the plaintiffs for possession of the disputed portion, against defendants No.1 to 5, was liable to be dismissed for they failed to substantiate their claim. Likewise, as regards defendants No.6 to 17, who, as per report Ex.PW4/A, were found to have encroached upon a portion of plot Nos. 370 and 214 towards the eastern side, claim of the plaintiffs could not be accepted either. For the report (Ex.PW4/A) could not be looked into as the Local Commissioner concededly carried out the demarcation in the absence of the parties and their counsels and without even serving any notice upon them.

Thus, the only and the inevitable conclusion that could be reached was: for the plaintiffs failed to substantiate their claim the suit was liable to be dismissed.

On being pointedly asked, learned counsel for the appellants-plaintiffs could not refer to anything on record to show if the conclusions that have concurrently been arrived at by both the Courts were either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere. The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

03.05.2023
Manoj Bhutani

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