

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.618 of 2021 (O&M)

Date of Decision: 20.02.2023

Rupinder Kaur

....Appellant

Versus

Sushil Azad and another

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Deepanshu Sharma, Advocate for
Mr. Sandeep Punchhi, Advocate
for the appellant.

Harsimran Singh Sethi, J. (Oral)

CM No.3399-C of 2021

Application is allowed as prayed for.

CM No.3400-CI of 2021 in/and
RSA No.618 of 2021 (O&M)

The present Regular Second Appeal has been filed challenging the judgment and decree of the trial Court dated 09.08.2019 by which, the suit for possession filed by respondent No.1-plaintiff was allowed as well as the judgment and decree of the Lower Appellate Court dated 30.01.2021 by which, the appeal preferred by the appellant herein was dismissed.

Learned counsel for the appellant-defendant argues that while allowing the suit, due consideration has been given to demarcation report, stated to have been done under the orders of the competent authority but, the same cannot be given effect as, appellant-Rupinder Kaur was not

present at the spot at the time of demarcation. Learned counsel submits that though, as per the demarcation report Ex.PW1/B, the appellant has been shown to be in possession of area more than the area which was purchased, but the said report should have been discarded by the Courts below to arrive at a finding that the appellant has encroached upon the area owned by respondent No.1-plaintiff.

Learned counsel for the appellant further submits that rather than seeking the suit for possession, the prayer of the respondent-plaintiff should have been for partition, which aspect has been totally been ignored by the Courts below hence, the judgment of the trial Court as well as the lower Appellate Court dated 09.08.2019 and 30.01.2021 respectively are liable to be set aside.

I have heard learned counsel for the appellant and have gone through the record of the case with his able assistance.

It is a conceded position that the parties to the present litigation purchased specific plots from the owner in question, description of which was given in the sale deed along with the area purchased. It is a further conceded position that as per the sale deed in favour of the appellant, she has purchased 18 marlas of land from the owner in question whereas, the mother of the plaintiff had purchased 13 marlas. Respondent No.2 in the present appeal purchased 6 marlas of land from the same owner. The case set up by respondent No.1-plaintiff was that the appellant-defendant has encroached upon the area of land purchased by respondent No.1 having more than the area she had purchased from the owner, which fact was being denied by the appellant.

In order to ascertain the factual aspect, as to who is in possession of the particular area and whether, the parties to the litigation

were having possession of the area, which they had purchased, a demarcation was ordered by the Tehsildar in October 2015. In the said demarcation, which was conducted through the specific methods, it was found that the appellant was having 22 marlas in her possession though concededly she was only the owner of 18 marlas. Keeping in view the said report, which had come on record as evidence and had gone unrebutted, the Courts below found that the appellant has encroached upon the area belonging to respondent No.1-plaintiff to the extent of 4 marlas and the suit filed by respondent No.1-plaintiff was allowed.

Learned counsel for the appellant argues that the demarcation report, which has been taken into account was bad as, the appellant was not associated while demarcating the area in question, which has caused prejudice to her. On being asked, that the demarcation report bears the signature of her husband and as per report her husband was present during demarcation, the said fact has not been denied but submits that the signature of the husband of the appellant should have been proved before the Courts below to ascertain his presence. Once, a finding has been recorded on the basis of demarcation report, which contains the signature of the husband of the appellant, which signatures have never been disputed by the appellant, it cannot be said that the appellant did not know about the said demarcation report or the same has been prepared at her absence. The argument raised by learned counsel for the appellant is contrary to the facts and evidence on record and hence, cannot be accepted.

Further, learned counsel for the appellant submits that as the parties to the litigation has purchased the land in question from the same owner, rather than seeking possession, suit should have been filed for

partition of the said land by the plaintiff. On being asked, whether specific area was sold to them with specific boundaries by the owner, learned counsel for the appellant conceded the said factum. Once a specific area with specific boundaries have been sold by the owner to different vendees and they are in possession of the said specific area, the argument that all the purchasers are co-sharers without there being specific boundaries, cannot be accepted.

No perversity in the findings of the Courts below either of fact or evidence has been brought to the notice of this Court. Moreover, this Court is not required to go into evidence again to re-appreciate whether a different finding should have been recorded or not.

Keeping in view the above, no ground is made out for interference by this Court.

The Regular Second Appeal and application for stay are consequently dismissed.

February 20, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*