

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.3706 of 2019

Reserved on : 04.01.2023

Date of Decision : 06.01.2023

Jagjeet Singh

....Appellant

VERSUS

Rajbir and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr.Sumit Sangwan, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees dated 29.03.2017 and 22.04.2019 passed by the Trial Court and the lower Appellate Court, respectively, dismissing his suit for permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed the present suit for permanent injunction against the defendant-respondents averring in the plaint that the plaintiff-appellant along with his brother Sarvan Singh; sister Dayawanti; brother's widow, namely, Saroj Bala; daughter Ritu; and sons, namely, Sumit, Gaurav and Bhupender, were recorded as owners in possession of the suit land situated in the revenue estate of village Jakholi, Tehsil and District Sonapat. It was further averred that the defendant-respondents were owners of Killa no.156, which falls on the southern side of Killa nos.154 and 155 owned by the plaintiff-appellant and his family members and that the defendant-respondents, who were strong headed persons, were trying to encroach upon the property of plaintiff-appellant and hence the suit.

The defendant-respondents contested the suit contending that

the plaintiff-appellant and his brothers and sisters had encroached upon land

owned by the Gram Panchayat and that when the defendant-respondents had objected the plaintiff-appellant had filed the present suit. It was denied that the defendant-respondents had threatened to encroach on the suit land owned by the plaintiff-appellant and his brothers and sisters.

On the basis of the pleadings of the parties and the evidence on the record, the Trial Court vide judgement and decree dated 29.03.2017 dismissed the suit of the plaintiff-appellant holding inter-alia that it had not been proved that the plaintiff-appellant was in possession of the suit land. The lower Appellate Court vide judgement and decree dated 22.04.2019 dismissed the appeal of the plaintiff-appellant holding that *“Keeping in view the facts and circumstances of the case particularly situation of the disputed land outside the plaintiff's boundaries and the demarcation being in the absence of the defendants it cannot be said that the land in question is part and parcel of killa no.154 and 155 belonging to the plaintiff. Therefore, suit of the plaintiff has rightly been dismissed by learned lower court”*. Hence, the present regular second appeal by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant would contend that the Naib Tehsildar had submitted his reported dated 30.08.2013 according to which the land marked by letters ‘ABC’ in the site plan attached with the demarcation report and measuring 166 sq. yards is part of the property comprised in Khasra nos.154 and 155 which were owned by the plaintiff-appellant. Learned counsel for the appellant would further contend that the *jamabandis* also reflect the ownership of plaintiff-appellant in Khasra nos.154 and 155 and there is presumption of truth which attaches to the *jamabandis*.

I have heard learned counsel for the plaintiff-appellant.

In the present case the plaintiff-appellant approached the Court alleging that a vacant piece of land had been encroached upon by the defendant-respondents and that the said vacant portion of the land measuring 166 sq. yards was part of Khasra nos.154 and 155, which were owned by the plaintiff-appellant. The report of the Naib Tehsildar sought to be relied upon by learned counsel for the plaintiff-appellant would be of no avail inasmuch as it has come in evidence that the said demarcation was done in the absence of the defendant-respondents. The area in dispute is vacant land measuring 166 sq. yards which falls beyond the boundary wall built by the plaintiff-appellant towards Killa no.156. The burden to prove that the said vacant land was part of the property owned by the plaintiff-appellant lay on the plaintiff-appellant, who failed to discharge the said burden. There is not an iota of evidence on the record besides the report of the Naib Tehsildar, which cannot be relied upon, to show that there has been any encroachment as alleged by the plaintiff-appellant. The argument of learned counsel for the plaintiff-appellant that presumption of truth attaches to the *jamabandis* and since the plaintiff-appellant is reflected as owner of Killa nos.154 and 155 and hence the suit ought to have been decreed is wholly misplaced inasmuch as there is no dispute regarding the ownership of Killa nos.154 and 155. The dispute is qua the vacant piece of land measuring 166 sq. yards and the question was as to whether the said land fell within the area of Killa nos.154 and 155. The said question cannot be ascertained from the *jamabandis*.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. The concurrent findings of fact recorded by both the Courts below do not warrant any interference by this Court. No question of law, much less substantial question of law, arises in the present appeal which is wholly devoid of any

merits and is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

06.01.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO