

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

RSA-5062-2010(O&M)

Reserved on:-24.4.2023

Date of Pronouncement:-2.5.2023

Dharam Singh @ Dharambir and another

...Appellants

Versus

Randhir Singh and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.P.R. Yadav, Advocate  
for the appellants.

Mr.Jai Singh Yadav, Advocate  
for the respondent No.1.

Mr.Surender Saini, Advocate  
for respondent No.3.

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**H.S. MADAAN, J.**

1. Briefly stated, facts of the case are that plaintiffs Dharam Singh @ Dharamvir and Mahipal, both sons of Sh.Sarjeet Singh, residents of village Gokalpur, Tehsil and District Rewari had brought a suit for permanent injunction against defendants Randher Singh and Mohan Singh @ Krishan, both residents of their village, arraying Karambir as a proforma defendant.

2. As per the case of the plaintiffs, they are owners in possession of plot situated within abadi of village Gokalpur, Tehsil and

District Rewari depicted as 'ABCD' and shown in blue colour in the site plan attached with the plaint; on the northern-eastern side of the suit property, the land of the defendants is situated; defendants No.1 and 2 threatened to grab the suit property by digging a foundation in the area marked 'EBFG' highlighted in red colour in the site plan attached with the plaint. Feeling aggrieved, the plaintiffs knocked at the door of the Court by way of filing a suit for grant of permanent injunction.

3. On notice, the defendants No.1 and 2 put in appearance and filed written statement contesting the suit raising various legal objections disputing the correctness of the site plan attached with the plaint. They denied having dug any foundation in the suit property, rather claimed that they had dug foundation in their own property with which the plaintiffs had no concern, rather the plaintiffs are threatening to dispossess the defendants from their property. Such defendants prayed for dismissal of the suit.

4. The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs and proforma defendant No.3 are owners in possession of the suit land as alleged? OPP.
2. Whether the portion shown in the site plan with red colour and marked EBFG is a part of plaintiffs plot? OPP.
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
4. Whether the plaintiffs have no locus standi to file the present suit?

OPD.

5. Whether the plaintiffs have no cause of action to file the present suit? OPD.

6. Whether the plaintiffs have not come with clean hands and estopped by act and conduct? OPD.

7. Whether the suit of the plaintiffs is barred by Order 7 Rule 11? OPD.

8. Relief.

5. The parties led evidence in support of their respective claims.

6. After hearing learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Rewari by giving issue-wise findings dismissed the suit of the plaintiffs. This was so done vide judgment and decree dated 12.12.2007.

7. Feeling aggrieved by the said judgment and decree, the plaintiffs No.1 and 2 had filed an appeal in the Court of District Judge, Rewari, which was assigned to Additional District Judge, Rewari, who vide judgment and decree dated 19.5.2010 dismissed the same upholding the judgment and decree passed by the trial Court.

8. Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

9. Respondents No.1 and 3 have also put in appearance through counsel.

10. I have heard learned counsel for the parties besides going

through the record.

11. The trial Court on close scrutiny of the pleadings of the parties and a minute and in-depth analysis of the evidence brought on record by them in light of the settled legal position has come to the conclusion that there are contradictions with respect to measurements and dimensions of the disputed plot. Ex.PW1/B site plan relied upon by the plaintiffs specifies the dimensions of the suit property as 36 ft. 6 inches in East to West direction and 45 ft. in North to South direction, whereas plaintiff Dharam Singh @ Dharamvir appearing as PW5 himself deposed that suit property measures 37 - ½ ft. in East to West direction and 45 ft. in North to South direction, when Ex.PW4/C, which is attested site plan of sale deed dated 12.3.1992 reflects that the suit property measures 45 ft in East to West direction and 37 - ½ ft. North to South direction. The sale deed dated 12.3.1992 relied upon by the plaintiffs Ex.PW2/B shows that the suit property is a plot of one Killa measuring 45 ft. in East to West direction and 37 - ½ ft. in North to South direction. Therefore, the dimensions of the suit property are contradictory as per the pleadings of the plaintiffs themselves. The trial Court further observed that the plaintiffs have been unable to establish their case because the dimensions of the property North to East portion where the alleged encroachment by the defendants is being carried out is itself not clear and claim of the plaintiffs cannot be entertained on the basis of assumptions and surmises. It has further been noticed that PW3 Parbhu Dayal, a witness examined by the plaintiffs in support of their claim had stated that plaintiffs have raised a boundary wall around the suit property. PW1 Ved Bhushan Yadav,

Draughtsman, who had prepared site plan Ex.PW1/B had stated that the suit property ABCD is a boundary wall. The trial Court has rightly observed that it is highly unreasonable to presume that somebody would encroach upon the boundary wall and dig foundation in the adjoining property. Therefore, the plaintiffs had been unable to establish that the defendants are encroaching upon the property belonging to them. As such, they were not entitled to decree for permanent injunction prayed for.

12. The First Appellate Court found itself in agreement with the trial Court and affirmed the conclusion drawn that plaintiffs were not entitled to decree for permanent injunction prayed for.

13. I find that the verdict given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

14. No substantial question of law or fact arises in this appeal.

15. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

2.5.2023  
Brij

(H.S.MADAAN)  
JUDGE

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**