

RSA-2760 of 2023 (O&amp;M)

2023:PHHC:142630

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

RSA-2760 of 2023 (O&amp;M)

Date of decision: 07.11.2023

Mahender

.....Appellant

Versus

Ramphal and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. Manoj Chahal, Advocate,  
for the appellant.

**NAMIT KUMAR, J.**

1. This Regular Second Appeal is directed against the judgment and decree dated 14.02.2018 passed by the Court of learned Civil Judge (Junior Division), Bhiwani, whereby suit for possession and permanent injunction filed by respondents No.1 to 4-plaintiffs has been decreed as well as against the judgment and decree dated 04.07.2023 passed by the Court of learned Additional District Judge, whereby appeal filed by the appellant and respondents No.5 and 6 against the judgment and decree dated 14.02.2018, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, Plaintiffs filed a suit for possession and permanent injunction claiming themselves to be exclusive owner in possession of the suit land, fully described in the headnote of the plaint. It is pleaded that they made several efforts to

get the suit land demarcated but could not succeed and finally the demarcation of the suit land was got done by way of filing an application before Tehsildar, Bhiwani and the said application was marked to Halqa Girdawar, Bhiwani. On the instructions and rules of the revenue laws, authorities, with the help of M/s. R.K. Land Surveying, Bhiwani demarcated the suit land. The memo of appearance and detailed computerized site plan was so prepared by giving all minute details of illegal encroachment by all the defendants, upon the suit property. The defendants are neighbours to the suit land but totally strangers and they have no right, title or interest in the suit property but, as they have been shown in the illegal encroachment of the land which they were ploughing, in the specific detail as mentioned in the plaint and also find favour in the demarcation report, made out a case that since this particular land, was held in the illegal possession of the specific defendants, they had a right to claim the possession back. It was further detailed that it was initially one Ballu who died and Ballu's land was adjacent to the suit property. It is pleaded that once plaintiffs' request by the defendants to vacate the peaceful possession of the suit property was not entertained, they filed suit for possession and permanent injunction.

3. Defendants No.1 to 3 contested the suit by the preliminary objections of plaintiffs having no cause of action, non-joinder and mis-joinder of necessary parties, plaintiffs come to the Court with mala fide intentions and principles of estoppel and question of maintainability also raised. On merits, it was submitted in the written statement that

plaintiffs filed the suit as a counterblast because defendants have already filed a suit for declaration as well as permanent injunction against the plaintiffs which is pending in the Civil Courts. Plaintiffs have filed the suit for possession without any basis and no detail of any encroachment has been given. No specific khasra numbers or killa numbers have been mentioned in the plaint in order to ascertain as on which part of any particular land, the plaintiffs are claiming illegal encroachment of which particular defendant in particular. Another contesting written statement was of defendants No. 4 to 7, however, they claimed that they never raised any objections to the demarcation of the land in question and demarcation was done with regard to the suit property. It was claimed by them that the alleged encroachment shown in the demarcation report has already been removed from the spot and there is no encroachment of the answering defendants on any part of the suit land today.

4. Plaintiffs filed replication to the written statement of the defendants, denying the averments of the written statement and reiterating the averments of their plaint.

5. Following issues were framed by the trial Court vide order dated 07.02.2017: -

- (i) Whether the plaintiffs are entitled to the relief of possession of the land detailed in the headnote of the plaint alongwith the consequential relief of permanent injunction as prayed for? OPP
- (ii) Whether the plaintiffs have no locus standi or cause of action to file the present suit ? OPD

- (iii) Whether the plaintiffs are estopped by their own act and conduct in the present form? OPD
- (iv) Whether the suit is liable to be dismissed for non-joinder and mis-joinder of necessary party? OPD
- (v) Whether the Civil Court has no jurisdiction to try the present suit? OPD
- (vi) Whether the suit is barred by limitation? OPD
- (vii) Relief.

6. Parties led oral as well as documentary evidence in support of their respective contentions.

7. After hearing arguments and after appreciating evidence on record, trial Court decreed the suit of plaintiffs vide judgment and decree dated 14.02.2018.

8. Aggrieved against the judgment and decree of the trial Court, defendants preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 04.07.2023.

9. Learned counsel for the appellant contended that judgments passed by both the Courts below suffer from illegalities and material infirmities as the same are result of misreading of evidence on record. He further contended that findings of the Courts below being perverse are liable to be reversed.

10. I have heard learned counsel for the appellant and perused the record.

11. The plaintiffs filed the suit for possession claiming themselves to be owners in possession of the suit land as per jamabandi Ex. P1 upon which, the defendants have encroached as per demarcation report Ex. P2. As per jamabandi Ex. P1 plaintiffs are owners in

possession of the disputed property as co-sharers and land of defendants is situated adjacent to the land of plaintiffs. Plaintiffs have based their claim on demarcation report Ex.P2 which has been proved by PW2 – Sunita Devi, Assistant, Record Room, DC Office, Bhiwani and PW3 – Ravinder Kumar, Kanungo, who conducted the demarcation and prepared the report Ex. P2. As per the demarcation report clubbed with the Naksha Tafavat prepared with the demarcation report, the encroachment over the plaintiffs land by defendants is clearly proved. The defendants No. 4 to 7 have already vacated the land encroached by them as per the report which has been mentioned in the written statement filed by them. Learned plaintiff counsel has stated vide his separate statement that defendants No 4 to 7 have vacated the land and he does not have any grievance against them and no relief is left against them. It is also clear from the written statement filed by defendants No. 4 to 7 in which they have submitted that the encroached portion has already been vacated by them. As per the report, defendants Mahender and Umed have encroached in khasra No. 60, killa No. 11 and 12 to the extent of 7 feet each in East and West and 440 each towards North and South i.e. total measuring 342 square yards. Similarly, defendant Mukesh has encroached to the extent of 396 feet each towards East and West and 4 feet each towards North and South total land measuring 176 square yards in khasra No. 60, killa No. 12 and 19. The aforesaid detail has been duly mentioned in the report Ex. P2 as well as in the site plan attached with the report. Moreover, in order to rebut the demarcation report tendered by plaintiffs, the defendants have failed to bring on

record any other demarcation report to prove the contrary. Therefore, Courts below have rightly observed that version of plaintiffs is clearly proved as per the demarcation report.

12. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

13. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

14. In view of the above, present appeal is dismissed.

15. Pending application(s), if any, stand disposed of accordingly.

07.11.2023  
R.S.

**(NAMIT KUMAR)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No