

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.753 of 1993 (O&M)

Reserved on: 14.05.2024

Pronounced on: 21.05.2024

Madan Lal and others

.....Appellants

Vs.

Municipal Committee

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ramesh Hooda, Advocate for the appellants.

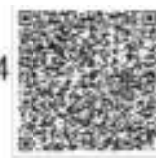
Mr. Sapan Dhir, Advocate for the respondent.

DEEPAK GUPTA, J.

Plaintiffs of this case are in the present Regular Second Appeal against reversal, inasmuch as suit filed by them seeking a decree for permanent injunction in respect of the property in dispute, was decreed by the trial court on 24.09.1991 but accepting the appeal filed by the defendant-Municipal Committee Rohtak, the suit was dismissed by first appellate court on 16.9.1992 by setting aside the judgment and decree of the trial court.

2. Trial court record was called and perused. To avoid confusion, parties shall be referred as per their status before trial court.

3.1 According to plaintiffs, they are owners in possession of suit property by virtue of a registered sale deed dated 16.2.1967 (Ex.P1). They raised construction thereon in the year 1967 itself and ever since then, they have been residing and running their business therein. It was stated further that there was a metaled road in front of the suit property constructed by the defendant- Committee. Defendant issued notice dated 17.05.1986 under Section 181 of the Haryana Municipal Act, followed by another notice dated 28.06.1986, alleging encroachment on the part of the plaintiffs over the



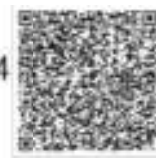
property in dispute. As defendants threatened to demolish the suit property, this compelled the plaintiffs to approach the Court seeking a decree of permanent injunction. Plaintiffs submit that there is no encroachment on their part. In the alternative, they also claimed that they and prior thereto, their predecessors have been in possession of the suit property for the last more than 40 years and in case, it is found to be a part of public street, the same has ceased to be so, as they have become owner thereof by way of adverse possession.

3.2 Defendants contested the suit by pleading that plaintiffs had made encroachment over the public street i.e. road to the extent of 12' x 32'3". It was claimed further that the encroached area is part of Khasra No.2966 and 2967 as recorded in the Municipal Survey Record for the year 1935-36, whereas the encroachment had been made by the plaintiffs recently in 1986. Other averments made by the plaintiffs were denied.

3.3 Following issues were framed by the trial court for adjudication:-

- “1. Whether the plaintiff has constructed the disputed portion over the site owned by him? OPP
2. Whether the site in question forms a part of road vesting in the Municipal Committee? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.”

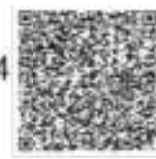
4. After taking the evidence produced by the parties, trial court held under issues no.1 and 2 that the plaintiffs are the owner in possession of the suit property and that the defendants had failed to prove any encroachment on their part. It was further found that construction of the plaintiffs existed on the land as purchased by them by virtue of sale deed Ex.P1 and that there was no encroachment. Under issue No.3, the suit was



held to be maintainable. Consequent to these findings, suit was decreed vide judgment and decree dated 24.09.1991.

5. In the appeal filed by the defendant-Municipal Committee, Rohtak, the First Appellate Court held that as per survey site plan Ex.D1, shajra Ex.D2 and site plan, suit land was part of Khasra Nos.2966 and 2967, which was a public street. It was held further that defendants had failed to prove that their vendors Maya Ram and Sher Singh were the owner in possession of the suit property, allegedly purchased by them in the year 1967 by way of sale deed Ex.P1 and so, the said sale deed did not create any right in favour of the plaintiffs. It was further held that the suit property was part of Khasra No.2966 and 2967 as per municipal survey for the year 1935-36 and as such, plaintiffs were not entitled to the injunction prayed by them, as they had made encroachment on the suit property. It was also held that due to the recent encroachment as proved by the defendants, plaintiffs are not entitled for relief to have become owner by way of adverse possession. Consequent thereto, the findings of trial court on issues no.1 and 2 were reversed and the suit was dismissed by allowing the appeal of the defendant-Committee by way of judgment and decree dated 16.09.1992 by the First Appellate Court of learned Additional District Judge, Rohtak.

6. Assailing the aforesaid findings of the First Appellate Court, it is contended by the learned counsel for the appellants-plaintiffs that the First Appellate Court has made out a fresh case, which is not even pleaded by any of the parties. The site plan Ex.PW3/A proved by a registered Architect revealed the construction of the plaintiffs on the suit property as per the dimensions mentioned in sale deed Ex.P1 of 1967. The said sale deed was never assailed by the defendant-Committee. No issue was framed regarding the legality or validity of the said sale deed; otherwise, plaintiffs would have



produced evidence to show that their predecessors were in possession of the suit property for the last more than 100 years. Learned counsel further points out that correctness of the site plan Ex.PW3/A was not at all challenged, as no question in cross-examination was put to PW3. Learned counsel contends further that no evidence whatsoever was led by the defendant-Committee that suit property was part of Khasra Nos.2966 and 2967. Simply by producing the municipal survey plan of 1935-36, it could not be held that suit property was part of any of these Khasras, in the absence of any demarcation. Learned counsel further refers to the statement of PW3, who proved that building of the plaintiffs was at least 20 to 25 years old and so, it was not fresh construction, as was alleged by the defendant-Committee. Learned counsel for the appellants has further drawn attention towards the fact that in the impugned notice, the encroached area is shown to be 32'3" x 12'; whereas in the site plan Ex.D3 relied by the defendant, the dimensions of the encroached area is different. Most importantly, no demarcation was got conducted in order to show that the alleged encroached area is part of Khasra Nos.2966 and 2967. With these submissions, prayer is made to set aside the judgment and decree passed by the First Appellate Court and to restore the judgment of the trial court, whereby suit of the plaintiffs-appellants was decreed.

7. Needless to say that the counsel for the respondent-defendant defended the judgment of the First Appellate Court and pleaded that the findings given by the First Appellate Court are findings of fact and that there is no scope for any interference. He prayed for dismissal of the appeal.

8. I have considered the submissions of both the sides and have appraised the record carefully.

9. After appraising the entire evidence on record, with the able



assistance provided by counsel for both the sides, this court finds that the present appeal deserves to succeed. Although scope of interference in the Regular Second Appeal by the High Court is limited but this court finds that the findings of the First Appellate Court are based on misappreciation of evidence on record or no evidence and rather, the said findings are perverse.

10. Plaintiffs claimed their title on the basis of sale deed Ex.P1 executed way back in 16.02.1967. Neither in the pleading nor in the evidence, defendant- Committee challenged the validity or legality of the said sale deed or the title of the vendors of the plaintiffs. As such, the First Appellate Court is held to have made out a fresh case to the effect that plaintiffs had failed to prove the title of their vendors.

11. In the sale deed Ex.P1, dimensions of the property as purchased by the plaintiffs are as under :-

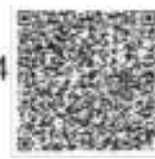
North	75'4”
South	72'8”
East	33'
West	32'6”

On the other hand, in the site plan Ex.PW-3/A proved by the testimony of PW3 Sh. Kashmiri Lal, the registered Architect, the area on which their building exist, is shown as under :

North	73'6”
South	72'3”
East	33'
West	32'6”

12. The bare comparison of the dimensions as mentioned in the sale deed and the site plan of the plaintiffs, would reveal that there could not be alleged encroachment of 32'3” x 12', as is alleged by the defendant- Committee in its impugned notice dated 17.05.1986 Ex.P3.

13. Proceeding further, the specific case of the defendant-



Municipal Committee is that suit property is part of Khasra No.2966 and 2967, which has been recently encroached upon by the plaintiffs. No doubt that in the Survey Site Plan Ex.D1 of the year 1935-36, Khasras Nos.2966 and 2967 are shown to be street but the said site plan to be read with blue print of the site plan Ex.D3; or shajra Ex.D2 showing the dimensions of Street No.2966 and 2967, do not in any manner prove that the property of the plaintiffs or any part thereof fall in Khasra No. 2966 or 2967. Neither any application was moved by the defendant-Committee nor any evidence was produced to show that any demarcation of the suit property was got conducted in order to reveal that the suit property was part of Khasra Nos. 2966 or 2967, as was alleged by the defendant-Committee. This Court is unable to comprehend, as to on what basis the First Appellate Court came to the conclusion that the suit property was part of Khasra Nos.2966 and 2967. The said finding of the First Appellate Court is based upon complete misappreciation of the evidence on record. As such the findings of the First Appellate Court on Issues no.1 and 2 are hereby reversed and that of the findings of the trial court are hereby restored.

14. Consequent to the above, the present appeal is hereby accepted. The impugned judgment and decree dated 16.09.1992 passed by the First Appellate Court are hereby set aside. The judgment & decree of the trial court dated 24.09.1991 are hereby restored, whereby suit is decreed. Appeal is allowed with costs throughout. Decree sheet be prepared accordingly.

May 21, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned: Yes/No
Whether Reportable : Yes/No