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Sunder was owner, who on 05.08.1915 mortgaged the plot in favour of Sh.Partap Singh (the plaintiff's father) and Sh.Shankar Lal for Rs.58/-.

In a family settlement, the aforesaid plot fell to the share of the plaintiff and the mortgage has never been redeemed. The defendants no.3 and 4 have wrongly sold the plot to defendants no.1 and 2 by executing separate sale deeds and they have forcibly occupied the plaintiff's plot.

3. Defendant no.1 claimed that he has purchased the property from defendant no.3 vide registered sale deed dated 27.03.1978 and Smt. Sunder was never owner of the property and the mortgage does not relate to the suit property. Defendant no.2 to 4 claimed that Smt. Sunder was never owner and defendant no.4 has sold the property in favour of defendant no.2. The trial court dismissed the suit, however, the First Appellate Court, on re-appreciation of evidence, in para 13-17 recorded the following findings of fact:-

“13. We also have documentary admissions of defendant nos.3 and 4 (vendors of defendant nos. 1 and 2) about the disputed plot of the plaintiff. Defendant No.4 Anandi Devi through her daughter Shanti Devi, moved application dated 15.3.76 to the Sub Registrar alleging that the plaintiff was selling his plot to Ram Singh etc. after including therein the eastern plot of defendant no.4. Copy of that application alongwith statement of Shanti Devi recorded by Sub Registrar is Ex.PW6/1. Defendant no.4 while appearing in the witness box as DW6 has admitted that she had moved such application through her daughter Shanti who has since died. Similarly, defendant no.3 also moved application dated 15.3.76 to the Sub Registrar alleging that plaintiff while selling his plot to Ram Singh

etc. was including therein the southern plot of defendant no.3. Copy of that application of defendant no. 3, alongwith his statement recorded by Sub Registrar on the same date is Ex.PW6/2. Defendant no.3 while appearing in the witness box as DW1 has admitted that he had moved an application to the Sub Registrar. His thumb impressions on the original application and original statement have also been proved by Finger Print Expert Sh. S. N. Aggarwal, PW10. Thus, it is evident that defendant nos.3 and 4 had moved the aforesaid applications and also made statements before the Sub Registrar. It was two years thereafter that they sold their alleged plots to defendant nos. 1 and 2 vide sale deed Ex.21 dated 27.3.78 and sale deed Ex.2 dated 28.3.78. So, defendant nos. 1 and 2 being successor-in-interest of defendant nos.3 and 4 are also bound by their admissions made by the latter in the aforesaid applications and statements. In the said applications and statements, defendant nos.3 and 4 have admitted that plaintiff has a plot at the disputed site, but defendant nos. 3 and 4 disputed the measurements of the plaintiff's plot. It was alleged that the plaintiff wanted to include in his plot the lands of defendant nos. 3 and 4 also. Shanti Levi daughter of defendant no. 4 specifically gave the measurements of plaintiff's plot as 34½ x 34½. The admissions are the best evidence that an opposite party can rely on. The aforesaid, admissions have not been explained in any manner by the defendants and so, they furnish the best evidence that plaintiff has a plot at the disputed site but its measurements are 34½ x 34½ and not 65' x 50' as alleged by the plaintiff. Learned counsel for the plaintiff relied on AIR 1981 Supreme Court 2085 Ramji Dayawala & Sons (P) Ltd. Vs. Invest import, wherein it was held that admission unless explained furnishes the best evidence. So, in our case, the aforesaid admissions are the

best evidence to prove the plaintiff's case to the aforesaid extent.

14. The aforesaid conclusion is further fortified by other documentary evidence on record. The plaintiff vide agreement Ex.P9 dated 19.12.75 agreed to sell the disputed plot to Ram Singh, Ramesh Chand and Roop Chand, giving the measurements of the total plot as 65' x50', out of which 40'x50' was agreed to be sold. The sale deed was to be executed upto 15.3.76. These prospective vendees sent notice Ex.PW6/4 to the plaintiff that the total plot of the plaintiff at the spot was found to be Measureing 34½ x 34½ only when the same was measured in presence of plaintiff, vendees and other inhabitants of the locality. In this notice, it was also mentioned that according to plaintiff's document of title i.e. mortgage deed Ex.P5 dated 5.8.1915, the measurements of the plot were mentioned in Arabian digits as 12 dara 8 girah in length as well as breadth, equivalent to 34½ each. However, the measurements in the mortgage deed Ex.P5 were made to 16 dara by overwriting and cutting in a suspicious manner. Perusal of mortgage deed Ex. P5 reveals that the measurements recorded therein are not clear and are somewhat suspicious, but the aforesaid notice shows that before the panches, it was found that measurements according to the mortgage deed were 34½ x 34½ and the same were the measurements at the spot also. These vendees also moved application dated 15.3.76 the Sub Registrar making the same allegations. Copy of that application along with their statement recorded by Sub Registrar is Ex.PW6/3. So, these documents also show that plaintiff's plot is there with measurement 34½ x 34½'.

15. The aforesaid conclusion is further fortified by the fact that admittedly, it was plot of defendant no. 4 towards east of the plaintiff's plot. After the plot of defendant no. 4, there

is a Govt. wall/passage towards east. There is admittedly a passage towards west of the disputed plot. So, the plots of plaintiff and defendant no.4 lie between these two passages, in this view of the matter also, the length of the plaintiff's plot is not likely to be 65' as alleged by him. On the other hand, it is evident from the aforesaid documents that measurements of the plaintiff's plot are 34½ x 34½'.

16. Learned counsel or defendant nos.2 and 4 submitted that admittedly there was plot of defendant no.4 towards east of the plaintiff's plot, and defendant no.4 sold her said plot to defendant no.2 and so, the plaintiff has no case against defendant nos.2 and 4. There is no dispute that defendant no. 4 did have plot towards east of the plaintiff's plot and now she has since sold the said plot to defendant no.2, so, defendant no.2 has legal right over that plot but the said right extends only after excluding the plaintiff's plot measuring 342x342 from the western passage. so, the decree against defendant nos. 2 and 4 would be only to the extent, if any, to which defendant no. 2 made encroachment on any part of plaintiff's plot measuring 34½ x 34½'. However, as regards defendant no.1, his encroachment is over the plaintiff's plot because defendant no.3 sold the plaintiff's plot representing it to be his own plot. Admittedly, defendant no.1 did not see any title deed of defendant no.3 for the said plot. On the other hand, in fact, there was some land in possession of Teekam towards south of the disputed plot. The plaintiff claims that land also to be his own. Teekam's daughter in-law subsequently married defendant no.3 as stated by him and they were residing in the house in that land as stated by defendant no.3 himself. That land was also sold by Teekam's grandson Piare Lal to Lajpet Rai vide sale deed Ex.P3 dated 10.6.76 as already discussed and as also admitted by defendant no.3. So, besides that land,

defendant no.3 had no land there and consequently, the sale by him vide sale deed Ex. P1 to defendant no. 1 is illegal as it pertains to plaintiff's land.

17. Learned counsel for defendant no. 1 contended that the boundaries given in the plaint and site plan Ex. P4 do not tally with the boundaries given in the mortgage deed Ex.P5 and family settlement Ex.PW8/1. It was also urged that applications Ex.PW6/1 and 2 do not pertain to the disputed plot. The argument is untenable. The boundaries in all the documents tally fully. Admittedly, there is thoroughfare in the west. The plot of defendant no.4 in the east also stands established. In the north, private gali has been mentioned in the plaint although in the mortgage deed Ex.P5, the chappar of Kishan Lal has been mentioned. However, this discrepancy infact is not there because vide agreement Ex.P9, the plaintiff agreed with his proposed vendees to leave the private passage in the north. in family settlement Ex.28/1 also, private passage has been shown in the north. As regards southern boundary in the plaint, it has been mentioned that there is plaintiff's plot in possession of Lajpat Rai. In mortgage deed Ex. P5 also, the chappar of mortgagees i.e. predecessors of the plaintiff has been mentioned in the south. However, in the family settlement, private passage for the disputed plot and the house of Teekam has been mentioned in the south. However, there is discrepancy in this regard because Teekam was in possession of the southern property and subsequently, the same was sold by his grandson Piare Lal to Lajpat nai vide sale deed Ex.P3 and so, it has been mentioned in the plaint that southern property is now in possession of Lajpat nai. So, there is no discrepancy in this behalf.”

4. Thus, the plaintiff's suit for possession with respect to plot measuring 34 ½ x 34 ½ feet has been decreed.

5. One appeal has been filed by defendant no.1 whereas the second appeal has been filed by the plaintiff. It may be noted here that defendants are not claiming to be successor-in-interest of Smt. Sunder.

6. Learned counsel representing defendant no.1 contends that admission, if any, is of defendant no.4 and not of defendant no.3. He submits that the admission of defendant no.4 would neither bind defendant no.3 nor defendant no.1. He further submits that the plaintiff has to stand on his own legs and he has failed to lead any evidence to prove that he was in possession of plot measuring 34 ½ x 34 ½ feet.

7. On the other hand, the learned senior counsel representing the plaintiff submits that the First Appellate Court has recorded finding of fact on appreciation of evidence, which is not proved to be result of misreading or non-reading of evidence. He submits that defendant no.3 also moved an application before the Sub-Registrar admitting that the plaintiff is the owner of the plot located towards southern side. He also draws the attention of the Court to page 87 of the trial court record wherein the statement of defendant no.3 recorded in civil suit no.77 has been proved, in which he has admitted that the plot of the plaintiff is towards southern side of his plot. Hence, the learned counsel representing the plaintiff contends that there is no merit in the appeal filed by defendant no.3. He further submits that the court has erred in partly decreeing the suit as his suit was liable to be decreed in entirety.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. From the evidence on record, it is apparent that Ex.PW6/2 is an application filed by defendant no.3 before the Sub-Registrar wherein he has admitted that towards southern side on his plot, the plot of the plaintiff is located. Similarly, defendant no.3 has made statement to this effect on 15.03.1976, which is available at page 87 of the trial court record. Furthermore, it is also evident that daughter of defendant no.4 has admitted that the plaintiff is in possession of plot measuring $34 \frac{1}{2} \times 34 \frac{1}{2}$ feet. Defendant no.1 has not led any evidence to prove the title of his vendor i.e defendant no.3. The civil cases are required to be decided on preponderance of evidence. The First Appellate Court has recorded more than one reason to substantiate that the plaintiff is owner of plot measuring $34 \frac{1}{2} \times 34 \frac{1}{2}$ feet. In the absence of evidence to prove that such finding is result of misreading or non-reading of material evidence, the interference in Regular Second Appeal is not appropriate.

10. With reference to the learned counsel representing the plaintiff, it may be noted that the First Appellate Court on appreciation of evidence has come to a conclusion that the plaintiff is entitled to plot measuring $34 \frac{1}{2} \times 34 \frac{1}{2}$ feet. Such finding is not proved to be suffering from any perversity.

11. Keeping in view the aforesaid facts, no ground to interfere is made out.

12. Hence, dismissed.

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Whether reportable :

Yes/No