

2024:PHHC:113509



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-156-1999 (O&M)

Reserved on: 30.08.2024

Pronounced on:02.09.2024

NASIB CHAND @ NASIB SINGH

... APPELLANT

Vs.

KAUR SINGH AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Arihant Jain, Advocate, for the appellant.

None for the respondents.

DEEPAK GUPTA, J.

Defendant (*appellant herein*) of the case is in this regular second appeal against reversal. Suit No.192 of 1995 titled '*Kaur Singh and others Vs. Nasib Chand*' for decree for possession of the property in dispute was dismissed by the Court of Id. Civil Judge, Junior Division, Sunam vide judgment and decree dated 04.11.1997. Appeal filed by the plaintiffs Kaur Singh and others (*respondents herein*) bearing CA No.205 of 1997 was allowed by the First Appellate Court of learned District Judge, Sangrur vide judgment dated 07.10.1998, thus decreeing the suit for possession of the suit property.

2. It is contended by Id. counsel for the appellant-defendant that learned Appellate Court has set aside the well reasoned judgment of the trial Court without any cogent reasons by ignoring the fact that there was no evidence on file to prove that defendant-appellant had made any encroachment on the property of the plaintiffs-respondents.

3. Appearance on behalf of the respondents-plaintiffs was made, but at the time of arguments, nobody put in appearance on their behalf.

4. I have considered submissions made by Id. counsel for the appellant and have also gone through the paper book.

5. As per the admitted case of the parties, plaintiffs are owner of the suit land comprised in khasra No.305/116 measuring 1 kanal 5 marla; whereas defendant Nasib Chand is owner of 1/2 share in the land comprised in khasra No.305/117 measuring 19 Marla having purchased the same vide sale deed dated 20.05.1991. It is also not in dispute that after the purchase, defendant constructed his house over the land purchased by him. It is further undisputed that khasra No.305/116 owned by the plaintiffs and khasra No.305/117, half share of which is owned by defendant, are situated adjoining to each other. The dispute is that plaintiffs allege that defendant has encroached upon a portion of the land owned by them and has raised illegal construction thereon, which allegation is refuted by the defendant. Prayer was made by the plaintiffs to direct the defendant to remove the illegal construction as made by him.

6. Perusal of the record would indicate that except for the oral assertion made by the plaintiffs to the effect that defendant had made encroachment over their land, there was no cogent evidence to prove this allegation. Although plaintiffs alleged that they came to know about the encroachment on their land by the defendant by way of a demarcation conducted by a revenue official, who told him that some land had been encroached by the defendant, but no such demarcation report was produced or proved on record. No such revenue official, who conducted the demarcation, was examined in the witness box. In view of this evidence, learned trial court came to the right conclusion that plaintiffs had failed to prove any encroachment on the part of the defendant and so, rightly dismissed the suit.

7. In appeal, the District Judge reversed the finding by holding that how much land of Khasra No.116 belonging to the plaintiffs had been encroached upon by the defendant, could be found at the time of execution of the decree and that a commission for demarcation could be appointed.

8. This Court is of the firm view that the said approach of learned First Appellate Court is absolutely fallacious. In the absence of any evidence to

the effect that defendant had made any encroachment on the land belonging to the plaintiffs, there was absolutely no justification so as to decree the suit. As it is the plaintiffs, who approached the Court alleging encroachment on their land by the defendant, it was for the plaintiffs to prove said allegation by getting the suit land demarcated. No such step was taken by the plaintiffs. As noticed earlier that although plaintiffs claimed that they came to know about the encroachment by getting the land demarcated through a Revenue Official, but neither such Revenue Official was examined nor was any demarcation proved on record.

9. In view of the aforesaid discussion, the judgment and decree as passed by the First Appellate Court, whereby the suit was decreed, are hereby set aside. The judgment and decree as passed by the trial Court are hereby restored, dismissing the suit of the plaintiffs.

10. Appeal is allowed accordingly. Parties are left to bear their own costs.

02.09.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>