

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1701-2023 (O&M)
Reserved on:02.04.2024
Date of Order:10.04.2024

Jagjit Singh and others

.Appellants

Versus

Ritu Bala and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Raghav Gulati, Advocate and
Mr. Varun Sharma, Advocate
for the appellants.

Mr. Vijay Kumar Jindal, Sr. Advocate, with
Mr. Akshay Jindal, Advocate
Mr. Sandeep Jain, Advocate
Mr. Pankaj Gautam, Advocate
for the respondents.

Mr. Kanav Singla, AAG, Punjab.

ANIL KSHETARPAL, J

1. In this regular second appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiffs' suit for possession of the land measuring 17 marlas located in khasra no.3983 and 5679/3984.

2. It is undisputed that the plaintiffs purchased 4 kanals and 16 marlas land through the registered sale deed dated 18.02.1994, from Smt. Aruna Aggarwal wife of Sh. Surender Aggarwal. As per the plaintiffs' case, the defendants have encroached upon the aforesaid land and Smt. Aruna Aggarwal was residing in Delhi and therefore, she sold the property in favour of the plaintiffs.

3. The defendants while contesting the suit claimed that they have

purchased plot measuring 13 marlas out of total land measuring 3 kanals and 10 marlas located in Khata No.1972/2926, khasra no.9164/5692/4023(2-3), 9162/5692/4023 (0-14) and 9163/5692/4023 (0-13), from Smt. Soma widow of Sh. Joginder Singh. In fact, Smt. Bachan Kaur, defendant no.3 and her husband Sh. Joginder Singh purchased the property, whereas defendants no.1 and 2 are Sh. Joginder Singh's sons. While filing the suit, the plaintiffs claim that upon demarcation in the presence of the defendants, it has been found that the defendants have encroached upon the area.

4. Upon appreciation of the evidence, both the courts decreed the suit. It has been found that the plaintiffs have only purchased plot measuring 13 marlas, whereas they are in possession of more than 5000 square feet area. The courts have also relied upon demarcation report of Sh. Gian Chand Kanungo, who was examined as PW1.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the photocopies of the trial Court's record which has been produced by the parties.

6. Vide order dated 25.07.2023, the Deputy Commissioner, Kapurthala, was directed to get the khasra numbers identified and demarcated with the aid of other revenue officials. Subsequently, an affidavit was filed by the Deputy Commissioner that demarcation of the property was not possible.

7. Keeping in view the aforesaid development, fresh directions were issued directing the Deputy Commissioner to carry out the demarcation with Global Positioning System (GPS) enabled total station machine (theodolite). Ultimately the demarcation has been carried out and the report

has been submitted. However, that report does not help the appellants. In the demarcation report, it is evident that the defendants are claiming share in different/separate khasra numbers than the suit property.

8. The learned senior counsel representing the appellants has made the following submissions:-

(i) The demarcation carried out by the Deputy Commissioner under the directions of the High Court has failed to point out any encroachment.

(ii) The defendants have purchased 3 kanals and 10 marlas from Smt. Soma wife of Sh. Niranjan.

9. Per contra, the learned senior counsel representing the respondents submits that it is amply proven from the report of Sh. Gian Chand, retired Kanungo, that the defendants have encroached upon the plaintiffs' property and therefore the courts have correctly decreed the suit.

10. This court has considered the submissions of the learned counsel representing the parties.

11. The sale deed executed by Smt. Soma in favour of Sh. Joginder Singh and Sh. Bachan Kaur has been produced. It is evident that the defendants have purchased plot measuring 40 feetx60 feet and they are in possession of land more than their entitlement. Ex.D53 is one of the site plan. It proves that the defendants are in possession of 10854 square feet area, whereas they are entitled to 3035 square feet.

12. Moreover, a perusal of demarcation report, it is evident that the demarcation was carried out in the presence of the defendants. It is important to note that defendants have not produced any evidence to prove that they have purchased 3 kanals and 10 marlas land from khasra no.3983

and 5679/3984, the disputed property. Now in view of the recent report submitted by the Deputy Commissioner of the district, the identification of the property has been established.

13. The civil cases are required to be decided on preponderance of evidence. In the written statement, it is not the case of the defendants that they have purchased 3 kanals and 10 marlas in the disputed khasra numbers. It is evident that the defendants have produced only one sale deed and that also with respect to the land of different khasra numbers from the suit property.

14. Hence, finding no merits, the appeal is dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

10th April, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO