



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

RSA No.2600 of 2023 (O&M)

Date of Decision: 14.05.2024

Chiranjee alias Chiranjeev

.....Appellant.

Versus

Kavita and others

.....Respondents.

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Deepak Girotra, Advocate
for the appellant.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree, as passed by learned Civil Judge (Junior Division), Sonipat (for short 'the trial Court') on 13.09.2022, whereby the Civil Suit filed by the respondents-plaintiffs (here-in-after to be referred as 'the plaintiffs') against the appellant-defendant (here-in-after to be referred as 'the defendant') for seeking the decree for possession of the suit property, has been decreed as well as by the judgment and decree, handed down by learned District Judge, Sonipat (for short 'the Lower Appellate Court') on 17.04.2023, qua the dismissal of the appeal moved by the defendant against the above-said judgment and decree rendered by the trial Court, he (defendant) has chosen to prefer the instant appeal to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, as emanating from the perusal of the record and culminating in the filing of the present



appeal, are that the plaintiffs had filed the afore-referred Civil Suit, while averring that the Gram Panchayat had allotted the suit property, i.e a plot measuring 100 square yards, to their predecessor-in-interest named Sate, on 12.01.1996. However, in July 2014, the defendant had encroached upon a portion of the said property and despite their (plaintiffs') repeated requests, he refused to vacate the same. The defendant filed his written-statement contesting the claim of the plaintiffs therein, on various grounds. Then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence as adduced by them on the record and hearing their respective counsel, the trial Court decreed the above-mentioned Suit and the first appeal, moved by the defendant, has also ended in its dismissal, as already discussed in the opening para of this judgment.

3. I have heard learned counsel for the appellant-defendant in the instant appeal, at the preliminary stage and have also gone through the record carefully.

4. Learned counsel for the defendant has contended that the trial Court and the Lower Appellate Court have erred in relying upon the report of the Local Commissioner regarding the demarcation of the suit property, by ignoring the fact that he (LC) had not followed the requisite procedure for conducting the proceedings for the said purpose, as no prior notice had been given to the defendant about the same and moreover, the defendant had also been allotted a plot by the Gram Panchayat in the year 1996 and after taking the possession thereof, he had constructed his house in it but the plaintiffs filed the afore-said Suit in October, 2015, i.e much after the



expiry of the prescribed period of limitation and to add to it, the plaintiffs had not affixed proper Court-fee on the Plaint and in these circumstances, it becomes quite explicit that the impugned judgments and decrees are not legally sustainable and hence, the same deserve to be set-aside.

5. However, the above-raised contentions are devoid of any force because as regards the contention qua the Report of Local Commissioner, it is worth-while to mention here that concededly, the defendant did not ever file any objections in respect thereof and the Lower Appellate Court has also categorically observed in Para No.23 in its judgment that PW3, i.e the Local Commissioner, who happened to be a ‘*Kanungo*’ (a revenue official), had placed the copies of the notices, as issued to the plaintiffs, defendant and ‘*Numberdar*’, on the record and had claimed that the notice had been duly served upon the defendant and his (defendant’s) testimony, as DW1, did go to show that he had not denied the factum of his having received the notice prior to the demarcation of the suit property nor he had prayed for any demarcation to counter the afore-referred Demarcation-Report nor had placed any Report regarding such demarcation, on the file and rather, he was completely silent about the demarcation-report, i.e the report of the LC. The defendant has not been able to advance any cogent reason/ground to explain/show as to how the above-mentioned observations are incorrect. Even otherwise, a perusal of the copy of the written-statement, as filed by the defendant in the Suit, reveals that throughout therein, he has not come forward with his own candid version so as to rebut/negate/controvert the specific averments of the plaintiffs, as canvassed in their Plaint, about the



encroachment over the suit property by him. It being so, the afore-said contention pales into insignificance.

6. So far as the contention regarding the Suit having not been filed within the period of limitation is concerned, the plaintiffs, as pointed out earlier, had categorically pleaded in the Plaint that the defendant had forcibly taken the possession of a portion of the suit property in July, 2014. Though in his written-statement, the defendant asserted that after taking the possession of the plot allotted to him, he had constructed his house thereon but he has not even disclosed the month or year of raising/completing such construction. The plaintiffs had filed the Suit in October, 2015 and in view of the above-narrated scenario, it is crystal clear that it had been filed well within the prescribed period of limitation.

7. The last contention regarding the non-payment/non-affixation of proper/requisite Court-fee by the plaintiffs on the Plaint, also does not cut any ice with this Court because a bare reading of both the impugned judgments shows that the defendant had not agitated the afore-mentioned issue/plea before any of the Courts below and rather, as per the record, he (defendant) himself had affixed/paid the Court-fee worth Rs.50/- only, at the time of filing the first appeal before the Lower Appellate Court and the Court-fee of Rs.57/- only, while moving the present appeal and hence, it does not lie in his (defendant's) mouth to raise such plea. Even otherwise, this contention/plea does not affect the merits of the instant appeal.

8. As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees, as passed by both the Courts below, do



not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the same are, hereby, upheld and the appeal in hand, being *sans* any merit, stands dismissed.

May 14th, 2024
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*