

(2009) 04 P&H CK 0346

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Bhim Singh and Another

APPELLANT

Vs

Dev Raj and Others

RESPONDENT

Date of Decision: April 21, 2009

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

This appeal by the plaintiff is directed against the judgment of the learned First Appellate Court dated 12.1.2009.

2. The plaintiffs-appellants have filed a suit pleading that they are owners in possession of the land which has been described in the plaint. It is contended that the respondents had attempted to encroach upon the plot of the plaintiffs in the month of September, 1994 and a suit was preferred on 19.9.1994 against the threatened encroachment. In that suit the defendant No. 1-respondent No. 1 appeared before the Court on 20.1.1995 and had made a statement that he had no intention to encroach upon the area and he had merely collected bricks for construction on his plot bearing No. 165. However, he still encroached upon the plot No. 166 of the plaintiffs which is measuring 96 feet x 8 feet and he has included this area in his plot No. 165. A prayer was made to the Court on 6th January, 1997 for appointment of Local Commissioner which was subsequently allowed. Local Commissioner visited the plot on 23.9.1999 and demarcated plots No. 156 156A, 156-B, 156-C and 166. It was pleaded that the report of the Local Commissioner revealed that part of the land comprised in plot No. 166 measuring 96 feet x 8 feet had been annexed to the area of plot No. 165 and construction had been raised thereupon. Therefore, the suit for removal of the construction and restoration of the encroached area was filed.

3. The respondents who were arrayed as defendants pleaded that they were not aware of the fact that plot Nos. 156 156A, 156-B, 156-C and 166 were allotted the plaintiffs during the partition of the abadi deh of village Jhinchholi. It was pleaded that they have purchased the piece of land measuring 830 square yards from Wazir Singh, Surat Singh and Smt. Sarjo vide registered sale deed dated 9.7.87 for a consideration of Rs. 20,000/- Plot No. 165 was allotted to Surat Singh whose L. Rs had sold the plot to them. Plot No. 164 was allotted to Mange Ram, Hukam Singh and Banwari who exchanged their plot with Surat Singh. Wazir Singh is son of aforesaid Surat Singh and after the sale deed, the vendees have raised construction thereafter in the year 1987. It was pleaded that the construction has been raised in the presence of the appellants who did not object to it and the case as set up by them regarding encroachment upon plot No. 166 is totally false.

4. Both the parties went to trial on the following issues:

1. Whether the plaintiffs are owners of plot No. 166 in detailed described in para No. 1 of the plaint? OPP.

2. Whether the defendants have made encroachment on any part of the said plot? OPP.

3. Whether the suit is barred under Order 2 Rule 2 CPC? OPD.

4. Whether the plaintiffs have no cause of action to file the present suit? OPD.

5. Whether the suit is not properly valued for the Court fees and jurisdiction? OPD.

6. Whether the suit is not maintainable in the present form? OPD.

7. Whether the plaintiffs have no locus standi to file the present suit? OPD.

8. Whether the plaintiffs have estopped by their own act and conduct to file the present suit? OPD.

9. Relief.

5. Learned Trial Court decreed the suit of the plaintiffs-appellants whereas in appeal the findings were reversed. This has resulted in the filing of the present regular second appeal.

6. Learned Counsel for the appellants has contended that the findings recorded by the learned First Appellate Court are perverse as they are contrary to the findings on record. It was pleaded that there is substantial evidence on record to show the identity of the plot in question i.e. plot No. 166 and the extent of encroachment by the respondents. This findings having been recorded erroneously and deserve to be set aside and the suit of the appellants deserves to be decreed.

7. I have heard learned Counsel for the appellants and have perused the impugned judgment.

8. If the evidence on record regarding the identity of the plot is to be perused then it appears that the appellant has miserably failed to establish the same. The whole case centres around the identity of plot No. 166 and the encroachment thereupon and the only evidence relied upon by the appellant is the site plan prepared by Navrang who was working as Clerk with Mr. C.S. Gehlaut, Advocate. He had depicted the disputed area by letters EBCF but in his testimony he has stated that he had not even visited the site before preparing the site plan. On the contrary, the respondents have produced Ex.D-1 which is the sale deed scribed on 9.7.87 at the instance of Wazir Singh and his mother Sarjo establishing their ownership over the property. Their possession was also adequately proved when they showed existence of construction of five rooms, one kitchen, a lobby and two stores and two varandahs and other attending structures. They also produced Ex.D-2 site plan prepared by Kanwar Singh DW5 who is Draftsman to establish the identity and measurements of the property in question. There is no other material on the basis of which appellants could say that the plot No. 166 had been encroached upon except for the site plan referred to above.

10. Accordingly, the Court is of the considered opinion that pure findings of fact have been returned by the Courts below and there is no inspiring evidence on record on the basis of which a conclusion could be arrived at on the basis of which the suit of the appellants could be decreed. No substantial question of law has been shown to have arisen in the present appeal and the same being devoid of any merit is hereby dismissed.