

**(2014) 03 P&H CK 0268**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** RSA No. 3512 of 2013 (OandM)

Sukhdev Singh

APPELLANT

Vs

Baldev Singh

RESPONDENT

**Date of Decision:** March 10, 2014

**Citation:** (2014) 176 PLR 651

**Hon'ble Judges:** Paramjit Singh Patwalia, J

**Bench:** Single Bench

**Advocate:** G.S. Chahal, Advocate for the Appellant

**Judgement**

Paramjit Singh Patwalia, J.

This regular second appeal preferred by appellant-plaintiff is directed against the judgment and decree dated 31.03.2011 whereby suit for permanent injunction filed by appellant-plaintiff has been dismissed, however, counter-claim of the defendants has been allowed and against the judgment and decree dated 16.08.2013 passed by learned Additional District Judge, Hoshiarpur whereby appeal preferred by appellant plaintiff has also been dismissed. For convenience sake, reference to parties is being made as per their status in the suit.

2. The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. However, the brief facts are to the effect that plaintiff filed suit for permanent injunction restraining the defendants from interfering in any manner and raising obstruction in the construction of the house of the plaintiff, as detailed in the head-note of plaint. It was pleaded that the plaintiff had purchased the suit land from Krishan Kumar son of Guran Ditta through valid registered sale deed dated 20.12.2001. Said Krishan Kumar was exclusive owner in possession of the suit land and he had surrendered the possession of the suit land in favour of the plaintiff and mutation with regard to suit land was also sanctioned in favour of the plaintiff. After the purchase of suit land, the plaintiff had filled up foundations of his residential house upto the plinth level. On the other hand, the defendants have no right, title or interest in the suit land. They were allegedly bent

upon to interfere into the possession of the plaintiff over the suit land and also bent upon to raise obstruction in the construction of the plaintiffs house. Hence, suit was filed.

3. Defendants resisted the suit and filed written statement taking various preliminary objections. On merits, it was pleaded that the plaintiff had purchased 5 marlas of land from Krishan Kumar. However, in the absence of the defendant, the plaintiff encroached upon area belonging to the defendants to the extent of 1 marla 2= sarsais. The plaintiff had purchased 5 marlas of land but raised construction over 6 marlas 2= sarsais. Apart from it, in the adjoining land comprised in khasra No. 273, there was red line of the village which was owned and possessed by the plaintiff, but the plaintiff had encroached upon the land of the defendants to the extent of 1 marla 2 = sarsais. On the other hand, defendant-Baldev Singh had purchased land comprised in khasra No. 273 from Parkash Singh through registered sale deed. The measurement of khasra No. 273 which was purchased by the plaintiff was 6 x 8 karams. The defendants had never interfered in the construction of the house of the plaintiff in any manner to the extent of 5 marlas of land. Similarly, the defendants were also ready to make statement that they would not interfere in the land of the plaintiff measuring 5 marlas comprised in khasra No. 273, owned and possessed by the plaintiff.

4. The defendants also filed counter-claim and prayed that a decree be passed in their favour and against the plaintiff qua land measuring 1 marla 2= sarsais as detailed in counter-claim.

5. Replication was filed controverting the pleas raised in written statement and reiterating the pleas taken in plaint. On the basis of pleadings of parties, the Court of first instance framed following issues:

"1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

2. Whether the defendants are entitled for possession of land measuring 1 marla 2= sarsahi as prayed in the counter-claim? OPD

3. Whether the sit plan filed by the plaintiff is wrong? OPD

4. Relief."

6. After appreciating the evidence, the Court of first instance dismissed the suit, however, allowed the counter-claim holding that the counter-claimants are entitled to possession of land measuring 1 marla 2= sarsai marked by letters EFGH, shown in the site plan, and the plaintiff has been directed to hand over the possession of the said land. Feeling aggrieved, the plaintiff preferred an appeal which has been dismissed by the lower Appellate Court. Hence, this regular second appeal.

7. I have heard learned counsel for the appellant and perused the record.

8. Learned counsel for the appellant has referred to following substantial questions of law suggested in the grounds of appeal for consideration by this Court:

"(i) Whether the impugned judgments and decrees passed by both the learned courts below are manifest, illegal, perverse and result of misreading of pleadings and evidence, hence the same deserves to be set aside?

(ii) Whether suit property as well as property mention in the counter-claim bear a particular khasra number?

(iii) Whether the site plan presented by the respondent defendant in counter-claim is as per the provisions of law and suit is decreed by the learned trial Court as well as confirmed by the learned lower Appellate Court?

(iv) Whether misreading of evidence by the learned courts below is by itself a substantial question of law?

(v) Whether it is dispute of title or demarcation?"

9. Learned counsel for the appellant has contended that there is complete misreading of evidence by both the courts below. Learned counsel has further contended that the defendants have no concern with the suit property and both the courts below have wrongly ignored the sale deed dated 20.12.2001 and have wrongly dismissed the suit of the plaintiff.

10. I have considered the contentions of learned counsel for the appellant.

11. Both the courts below have recorded concurrent findings that the defendants have duly proved the fact that the plaintiff has encroached upon 1 marlas 2 = sarsahi of land illegally and the plaintiff has also admitted in his cross-examination that he will leave the land beyond 5 marlas. It has also been rightly held that there is no dispute regarding 5 marlas of land which has been purchased by the plaintiff, but he has encroached upon 1 marlas 2= sarsahi of the land of the defendants. It has been rightly held that since the plaintiff has not come to the court with clean hands, therefore, he is not entitled to any injunction against the defendants while defendants have fully proved encroachment made by the plaintiff on 1 marla 2= sarsahi marked by letters EFGH shown in the site plan attached with the plaint. It has also been rightly held that the defendants have proved the report of local commissioner which is correct while the plaintiff has not depicted the exact dimensions in the site plan.

12. Moreover, the plaintiff has not preferred separate appeal challenging the acceptance; of counter-claim of defendant No. 1 meaning thereby that he has accepted the impugned judgment. Since counterclaim is just like an independent suit, two appeals ought to have been filed. In absence of same, principle of res judicata will apply. Reference can be made to the decision rendered in Harbans Singh and Others Vs. Sant Hari Singh and Others, by the Hon"ble Supreme Court.

Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or misappreciation of the material evidence on record. Consequently, concurrent findings of fact recorded by both the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.