

(2020) 09 P&H CK 0259

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1948 Of 2018 (O&M)

Sahab Singh And Others

APPELLANT

Vs

State Of Haryana And Others.

RESPONDENT

Date of Decision : 07-09-2020

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2020) 09 P&H CK 0259

Hon'ble Judges : Alka Sarin, J

Bench : Single Bench

Advocate : Vineet Chaudhary, Upasana Dhawan

Final Decision : Dismissed

Judgement

Alka Sarin, J

Heard through video conferencing.

CM-4368-C-2020:

This is an application for restoration of the main appeal which was dismissed for non-prosecution vide order dated 04.03.2020.

For the reasons stated in the application, the application is allowed and the appeal is restored to its original number.

With the consent of learned counsel for the parties, the appeal is taken on board for hearing.

CM-5350-C-2018:

This is an application under Section 5 of the Limitation Act, 1963, for condonation of delay of 25 days in filing the appeal.

For the reasons stated in the application, the application is allowed and delay of 25 days in filing the appeal is condoned.

RSA-1948-2018:

The present appeal has been preferred by the plaintiff-appellants against the concurrent judgments and decrees passed by both the Courts below dismissing the suit for possession filed by the plaintiff-appellants.

In brief, the facts germane to the present case are that the plaintiff-appellants filed the present suit for possession of land bearing Khewat/Khatoni No.534 min/666 min, Khasra No.31//7/8 measuring 2 marlas (hereinafter referred to as the "suit land"). It was alleged in the plaint that the defendant-respondents had illegally encroached upon the suit land of the plaintiff-appellants and constructed a road thereupon. The suit was filed relying on the demarcation report dated 30.05.2012 which was got prepared from a retired Kanungo, Balbir Singh. It was further the case set up by the plaintiff-appellants that they were owners in possession of the suit land and their ownership was clear from the jamabandi for the year 2005-2006. It was also alleged that the Safeda/eucalyptus trees standing on the suit land are also owned and possessed by the plaintiff-appellants. The further allegation in the plaint was that defendant/respondent No.2 had constructed a road on the suit land in the absence of the plaintiff-appellants and when the plaintiff-appellants came to the spot and requested the defendant-respondent No.2 to demarcate the land and remove the encroachment from the suit land the matter was deferred by the defendant-respondent No.2 on one pretext or the other. Eventually, when the plaintiff-appellants got the land demarcated, they came to know that the defendant-respondents had encroached upon the suit land by constructing a road thereupon.

The suit was contested by the defendant-respondents. Defendant-respondent Nos.1 and 2 filed a written statement raising the preliminary objections regarding maintainability, limitation, estoppel, locus standi and court fee. On merits, it was stated that the road allegedly shown in the suit land was constructed in the year 1973 on the available consolidation path and the plaintiff-appellants had never requested for demarcation of the suit land at that time or even thereafter. It was further stated that even if any demarcation had been got done by the Ex-Kanungo, Balbir Singh, on 30.05.2012 i.e. more than 40 years after construction of the road, the same had no legal sanctity as no notice had been given to the defendant-respondent Nos.1 and 2 as required under the law. Further, the demarcation itself had not been done properly as it was incumbent upon the Local Commissioner to serve prior notice on the PWD authorities to demarcate the land after putting/making 'Pukka Nishan' first.

Defendant-respondent Nos.3 and 4 filed their separate written statement wherein it was stated that the plantation had been done by the Forest Department in the year 1977 as the land belongs to the Forest Department as notified vide Notification No.SO.96-/CA1/27/S.20/82 which can be adjudged best by way of demarcation in the presence of the Forest Department officials. It was also averred that the plantation was done on forest land alongside the road and not in the suit land which is owned and managed by the Forest Department.

The Trial Court framed the following issues:

- "1. Whether the plaintiff is entitled to decree for possession of land as claimed in the plaint ? OPP
2. Whether plaintiff has not come to the Court with clean hands ? OPD
3. Whether suit of the plaintiff is bad in the eyes of law ? OPD
4. Relief."

On the basis of the pleadings and the evidence led by the parties, the Trial Court dismissed the suit of the plaintiff-appellants holding the suit to be barred by limitation. Aggrieved by the judgment and decree dated 04.05.2016 passed by the Trial Court, the plaintiff-appellants challenged the same before the Lower Appellate Court. The Lower Appellate Court vide its judgment and decree dated 10.07.2017 dismissed the appeal of the plaintiff-appellants holding therein that PW5 Balbir Singh, retired Kanungo, did not fix the pucca points before preparing the demarcation report and that the said report was against the instructions laid down in the Rules and Orders of the High Court. Further, the Lower Appellate Court held that the jamabandi, Ex.P1, recorded land situated in Khasra No.31//7/8 measuring 2 Marlas to be 'Gair Mumkin Gadda Khad'. The Lower Appellate Court also found that the road was admittedly constructed in the year 1972 i.e. much prior to the date of preparation of said jamabandi Ex.P1 and that the said jamabandi showed the Khasra No.31//7/8 (0-2) as 'Gair Mumkin Gadda Khad' and not a road, whereas as per the demarcation report Ex.P3 the whole of the land of the plaintiff-appellants was under the road and, therefore, the necessary presumption would be that the land of the plaintiff-appellants is not coming in the road owned by the defendant-respondents. On the said basis, the Lower Appellate Court dismissed the appeal filed by the plaintiff-appellants. Hence, the present regular second appeal.

I have heard the learned counsel for the parties.

The counsel for the plaintiff-appellants has argued that it was amply proved on the record that the plaintiff-appellants were owners of the suit land which had been encroached upon by the defendant-respondents and a road constructed illegally thereon. To prove the ownership of the plaintiff-appellants over the suit land he relied upon the jamabandi for 2005-2006, Ex.P1 and to prove that the defendant-respondents had encroached upon the suit land and illegally constructed a road thereon he relied upon the demarcation report, Ex.P3. According to the counsel, these documents had not been considered properly by the Courts below and infact clinched the issues in favour of the plaintiff-appellants.

The plaintiff-appellants had filed their suit relying on two documents i.e. jamabandi for the year 2005-2006 (Ex.P1) and the demarcation report dated 30.05.2012 (Ex.P3) to contend that the suit land measuring two marlas, which was owned by the plaintiff-appellants, had been encroached upon by the

defendant-respondents who had constructed a road thereon. However, a scrutiny of the evidence led, as discussed by the Courts below, shows that Sukhwinder Singh, PW1, one of the plaintiff-appellants, categorically admitted the fact that the road on the spot had been constructed way back in the year 1970 whereas the present suit had been filed on 15.01.2013. He had further admitted that they had never approached the PWD Department or any other Government department regarding compensation in lieu of their land that had been covered underneath the road. It was further admitted by Sukhwinder Singh, PW1, that the Safeda trees standing along the road were 30-40 years old. It was further admitted that they had never challenged the notification, Ex.DII, which was issued by the Haryana Government by way of which the property was acquired.

Another plaintiff-appellant, Gurmail Singh, while appearing as PW2 reiterated the version of the plaintiffs in his examination-in-chief and stated that the road was constructed way back in the year 1970 and the Safeda trees had been planted on both sides of road by the owners of the road. Another plaintiff-appellant, Sahab Singh, appeared as PW3 and also admitted the fact that the road was constructed in the year 1970 and that they had never moved an application before the concerned PWD Department for compensation. PW4 Randeep Singh, Office Kanungo in his examination-in-chief stated that he has seen the demarcation report dated 30.05.2012 Ex.P3 which had been prepared by retired Kanungo Balbir Singh. The author of the demarcation report Ex.P3 i.e. retired Kanungo Balbir Singh, while appearing as PW5, has not stated anywhere in his examination-in-chief that any notice was issued to the defendant-respondents before conducting the demarcation. In fact, in his cross-examination he admitted that at the time of the demarcation none of the officials of the defendant-respondent Departments was present and that he never issued any notice to the PWD Department or the Forest Department prior to the demarcation.

The pleadings as well as the evidence led by the plaintiff-appellants leaves no manner of doubt that the road was constructed on the suit land way back in the year 1970. The plaintiff-appellants had approached the Court primarily on the basis of two documents - one was the jamabandi for the year 2005-2006 and the other was the demarcation report prepared by the retired Kanungo. The jamabandi for the year 2005-2006 Ex.P1, as noticed above, shows that there was a 'Gair Mumkin Gadda Khad' in Khasra No.31//7/8 (0-2). However, the demarcation report Ex.P3 prepared by the retired Kanungo refers to a road having been constructed on the said Khasra numbers. The suit land would either be a Gadda Khad i.e. pits or a road. There cannot be a road in a pit. Thus, the documents relied upon by the plaintiff-appellants themselves are not reliable, inasmuch as, both the documents Ex.P1 and Ex.P3 totally contradict each other. Further, the plaintiff-appellants have miserably failed to bring any document on the record, besides the jamabandi Ex.P1, to show that they were the owners of the suit land measuring two marlas on which a road was constructed in the year 1970. That apart, the plaintiff-appellants have neither before the Courts below nor before this Court been able to show any cogent reason as to why an owner of

the land would keep quiet for more than 40 years before filing such a suit for possession. Even the evidence led by the plaintiff-appellants themselves does not support their case, inasmuch as, all the witnesses including the plaintiffs themselves have admitted the fact that the road on the suit land was constructed in the year 1970 and that they never moved any application before the concerned PWD Department for compensation. The demarcation report Ex.P3 prepared by the retired Kanungo Balbir Singh has no evidentiary value as it was prepared without giving any notice to the defendant-respondents and was not as per the procedure laid down under the Punjab Land Revenue Act, 1887 and under Volume-1 Chapter 1-M of the Rules and Orders of the Punjab and Haryana High Court regarding 'Hadd Shikni' cases.

In view of the above, I do not find any error in the judgement and decrees passed by both the Courts below. The present regular second appeal, being devoid of any merit, is dismissed.