



115 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-440-2024 (O&M)
DECIDED ON: 20.01.2025**

WAZIR SINGH

.....APPELLANT

VERSUS

STATE OF HARYANA AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Sunil Goswami, Advocate
 for the appellant.

VIKRAM AGGARWAL, J (ORAL)

CM-1581-C-2024

Prayer in the present application is for condonation of delay of 20 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 20 days in filing the appeal is condoned.

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1. This is plaintiff's second appeal against the judgment and decree dated 20.10.2023 passed by the Court of learned Additional District Judge, Hisar dismissing the appeal against the judgment and decree dated 10.07.2018 passed by the Court of learned Additional Civil Judge (Senior Division), Hansi, vide which the suit filed by the appellant for permanent injunction was dismissed.

2. The plaintiff filed a suit for permanent injunction restraining the defendants from demolishing or dispossessing the plaintiff from his house and shop constructed on land comprised in Khasra No.512//22/2/1(2-3) Khewat No.5237//5032, Khatoni No.6463 situated near Railway Station,



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Umra Road, Tehsil Hansi, District Hisar. The case set up by the plaintiff was that he had purchased a plot measuring 04 Marlas (127 Sq. Yards), being 4/63 share of Khasra number referred to above as per the Jamabandi for the year 2012-2013 vide registered sale deed dated 18.11.2005. Mutation dated 28.12.2005 was entered. The plaintiff constructed his house and shop. A notice dated 27.05.2016 was issued by defendant No.2 stating that the plaintiff was in unauthorized possession of a portion of the land mentioned in the notice. The notice was issued on the basis of some demarcation having been carried out by the defendants. It was averred that the notice had never been served upon the plaintiff and that a false demarcation report had been prepared. It was also averred that despite considering the objections of the plaintiff, a number of notices were issued on various dates to remove the unauthorized construction. It was also averred that some land had been acquired vide award No.35-H dated 20.01.1960 but the land of the plaintiff had never been acquired.

3. The suit was opposed by the defendants. In the written statement, certain preliminary objections on the ground of maintainability, jurisdiction, the suit being time barred, the plaintiff not having approached the Court with clean hands etc. were raised. On merits, it was stated that there was a common road from Hansi to Village Umra which was 12 Karams wide and was in Khasra No.1260 and 512//22/2. It was a metalled road being used by the common people of villages Umra, Sultanpur, Dahima, Ratera, Nalwa etc. It was averred that a railway crossing and an over bridge was to be constructed. It was further averred that the plaintiff had encroached upon land measuring 34.91 Sq. Yards comprised in Khasra No.512//22/2 and accordingly dismissal of the suit was prayed for.



4. From the pleadings of the parties, the following issues were framed:-

“1. Whether the plaintiff is entitled for permanent injunction restraining the defendants from demolishing or dispossessing the plaintiff from his house and shop as the said land of the house and shop has never been acquired nor any compensation was paid? OPP

2. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

3. Whether the suit of plaintiff is bad on account of mis joinder and non joinder of necessary party? OPD

4. Whether the plaintiffs have not affixed proper court fee? OPD

5. Whether the plaintiff has not come with clean hand in the Court? OPD

6. Relief.”

5. Parties led their respective evidence.

6. The trial Court dismissed the suit filed by the plaintiff. The appeal met with a similar fate, leading to the filing of the present appeal.

7. I have heard learned counsel for the appellant.

8. Learned counsel for the appellant submits that the Courts below wrongly placed reliance upon the demarcation report Ex.D-7, though, the demarcation had not been conducted in accordance with law. He submits that the person who had prepared the demarcation report did not step into the witness box. Learned counsel further submits that despite the plaintiff having proved a *prima facie* case in his favour as also the fact that the balance of convenience was in his favour and that the non grant of an injunction would cause an irreparable loss and substantial injury to him, both the Courts non-suited him.



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9. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

10. Admittedly, certain notices were issued to the plaintiff stating that he had encroached upon some portion of Government Land. As per the plaintiff himself, a number of notices were received. However, he placed on record only one notice dated 27.05.2016 (Ex.P-5). He did not produce any evidence to show as to whether he had responded to the said notice or not. No evidence was led to show that there was no encroachment on Government Land by the plaintiff. Only a site plan (Ex.P-4) was produced, which, in the considered opinion of this Court would not be sufficient to show as to whether there was an encroachment or not. It was for the plaintiff to prove his own case by leading cogent evidence, which he miserably failed to do. On the other hand, the defendants produced a copy of the award No.35-H as Ex.D-1, copy of communication dated 04.06.2015 sent by the Sub Divisional Engineer to the Tehsildar concerned for conducting demarcation as Ex.D-2, notice issued by the Revenue Authorities calling upon the relevant persons at the time of execution of demarcation (Ex.D-3), the list of witnesses who were present at the time of demarcation (Ex.D-4), receipt regarding munadi carried out for the demarcation (Ex.D-5) and the report (Ex. D-7). This apart, Mr. Jai Bhagwan Chopra, SDO, PWD, B and R, Hansi stepped into the witness box as DW-1 and deposed about the demarcation having been conducted in which it was found that the plaintiff had encroached upon 34.91 Sq. Yards of land out of Khasra No.512//22/2 on which the road had been constructed. No evidence to disprove the said demarcation report was led by the plaintiff nor any evidence was led to prove his own case. In the considered opinion of this Court, no further



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evidence was required on behalf of the defendants to prove that the plaintiff had encroached upon the said portion of the land. Both the Courts considered the facts and non-suited the plaintiff. Having perused the findings recorded by both the Courts, I do not find any illegality in the same. Being pure questions of fact, I do not deem it appropriate to interfere in the second appeal.

In view of the aforesaid facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

20.01.2025

Prince Chawla

**(VIKRAM AGGARWAL)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No