

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

R.S.A.No.4656 of 2010 (O&M)

Date of Decision: August 25, 2015

Attar Singh

...Appellant

Versus

Rajender Parsad & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr.Jai Vir Yadav, Advocate,
for the appellant.**

None for the respondents.

AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the judgments and decrees of both the Courts below, whereby the suit for possession for property shown in the site plan and the demarcation report has been decreed. It has further been directed that the possession be got delivered to the plaintiff and proforma defendants. A decree for permanent injunction has also been passed in favour of the plaintiff restraining defendant No.1 from raising construction of any kind and further restraining to take possession of other part of the Chah in dispute, much less, interference in the peaceful possession and use of the plaintiff and proforma defendants with a further injunction that in case defendant No.1 is successful in raising

of any construction during the pendency of the suit or take illegal possession of other part of the Chah in that event a decree for possession be passed.

Mr.Jai Vir Yadav, learned counsel appearing on behalf of the appellant-defendant No.1 submits that there is no dispute to the legal proposition of law, much less, of Indian Evidence Act that the plaintiff has to stand on his own legs and not to rely upon the weak defence and wicket of the defendant. He further submits that the alleged demarcation report has not been proved in accordance with law and it is only a marked document. The son of the draftsman has been produced by the plaintiff, who had submitted that the author of the demarcation report is suffering from paralysis. No steps have been taken by the plaintiff to examine the said witness by taking the aid of provisions of Order 26 Rule 1 CPC. He further submits that the suit was time barred as the plaintiff's witness unequivocally admitted that the alleged construction was done by the appellant 35 years back, whereas the suit was filed beyond the period of 12 years and, therefore, the suit for possession could not have been decreed. He further submits that marking of the document would not dispense with the proving of the demarcation report and, therefore, following substantial questions of law arise in the present appeal for determination by this Court:-

- a) Whether the marked document in the absence of its proof can be looked into evidence?
- b) Whether the Courts below have committed an illegality and perversity while taking into consideration the unproved report?

c) Whether the plaintiff has discharged the onus as per Section 101 of the Indian Evidence Act?

d) Whether the demarcation report stands proved and whether the finding could have been recorded on the basis of such a demarcation report?

Despite service, no one has put on appearance on behalf of respondent No.1-plaintiff. The orders to this effect would endorse the aforementioned fact.

I have heard the learned counsel for the appellant-defendant No.1.

While taking into consideration the aforementioned facts and as well as the impugned judgments and decrees of both the Courts below, it has been found that the plaintiff has only brought on record the demarcation report, which was marked as mark-A. The said witness has not been examined by the plaintiff, instead his son Naresh Kumar has been examined, who stated that the author of the demarcation report was suffering from paralysis. No assistance of the Court has been taken to examine the said witness by resorting to the provisions of Order 26 Rule 1 CPC. It is now settled law that the plaintiff has to stand on his own legs and cannot rely upon the weak defence or no defence of the defendant.

Both the Courts below, in my view, had committed an illegality and perversity in not noticing the provisions of Section 101 of the Indian Evidence Act. The plaintiff has failed to discharge the burden and, therefore, there was no occasion for the appellant-defendant to rebut the same. In essence, the plaintiff has failed to prove the categorical averments in

the suit, thus, there was no occasion for the Courts below to decree the suit on the basis of unproved document.

In view of what has been observed above, the substantial questions of law are answered in favour of the appellant-defendant No.1 and against the respondent-plaintiff. The suit is dismissed and the appeal is accordingly allowed.

August 25, 2015
ramesh

(AMIT RAWAL)
JUDGE