

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

**RSA-2869-2012 (O&M)
Date of decision-16.10.2015.**

OMPATI

...Appellant

VS

BALJEET

...Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:-Mr. Parminder Singh, Advocate
for the appellant.

Mr. S.P Chahar, Advocate
for the respondent.

RAJ MOHAN SINGH, J (Oral)

C.M No.7707-C-2012

For the reasons mentioned in the application delay of 58 days
in filing the appeal is condoned.

Application stands disposed of.

RSA-2869-2012 (O&M)

[1] Defendant is in second appeal against judgment and decree
dated 04.01.2012 passed by Additional District Judge, Jhajjar vide
which judgment and decree dated 04.11.2010 passed by Civil Judge
(JD) Bahadurgarh was upheld.

[2] Plaintiff-respondent filed a suit for possession and permanent
injunction to the effect that plaintiff is owner in possession of the suit

land. Plaintiff has already constructed house on the suit land. Land of the defendant is adjoining towards Southern side to the land of the plaintiff and the defendant has encroached upon land of the plaintiff to the extent of 24 square yards which is shown in red color in the site plan attached with the suit. In the demarcation, aforesaid encroachment was found and on refusal to remove the same, present suit came to be filed.

[3] Defendant has contested the suit on all customary pleas, denying the factum of encroachment, however, defendant did not lead any evidence. Evidence of the defendant was closed by order of the Court on 18.10.2010. Trial Court and Appellate Court appreciated the evidence of the plaintiff to held that there is encroachment by the defendant to the extent of 24 square yard i.e. 8 feet in East, 8 feet in West, 27 feet in North and 27 feet in South out of Khasra No.324. The evidence of the plaintiff remained un-rebutted, proving that plaintiff is owner of Khasra No.324 to the extent of 5 marlas. Factual possession is duly depicted in Exhibit P-1 i.e. Jamabandi for the year 2001-02, wherein father of the plaintiff has been duly shown as owner in possession of the Khasra No.324. Plaintiff has been shown to be owner in possession of this Khasra vide mutation No.2765 Exhibit-P-2 and another revenue documents vis aks-sizra and site plan of the property in question.

[4] The factum of encroachment has been duly pointed out by the Local Commissioner who demarcated the property and submitted report Exhibit P-5. Encroachment to the extent of 24 square yard has been shown in the aforesaid demarcation report to which no objection was filed by the defendant. Local Commissioner was appointed by the Court on an application during pendency of the suit which was duly allowed and kanungo Bahadurgarh was appointed as Local Commissioner who gave the report in question. The report reveals that the defendant was present at the time of demarcation who put her thumb impression in token of confirmation of report. Since, there is no evidence on behalf of the defendant to rebut evidence of the plaintiff, neither the defendant appeared in the witness-box nor produced the evidence. The entire evidence of plaintiff remained un-rebutted. Both the Courts below on appraisal of un-rebutted evidence of the plaintiff-respondents have arrived at finding of fact, endorsing factum of encroachment to the tune of 24 square yard of land by the defendant which in considered opinion of this Court cannot be faulted with.

[5] No substantial question worth consideration is involved in this case particularly when the defendant led no evidence nor the defendant appeared in the witness-box. Report of the Local Commissioner finds

presence of the defendant on the spot who put her thumb impression in token of confirmation of the same. In the absence of no rebuttal to the evidence of the plaintiff, no indulgence can be made by this Court in second appeal.

[6] Secondly this appeal is totally bereft of merit and the same is dismissed.

October 16, 2015

vanita

**(RAJ MOHAN SINGH)
JUDGE**