

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

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R.S.A No. 3516 of 2012 (O&M)

Decided on : January 06, 2015

Dharampal

... Appellant.

Versus

Balwant Singh

... Respondent

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Sanjay Mittal, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Civil Suit No.10 of 2004 was brought by Dharampal (the appellant herein) to seek permanent injunction to restrain Balwant Singh (the respondent herein) from interfering in land measuring 16 kanals 15 malras comprised in Khewat No.80 min Khatoni No.93 mustil and killa No.257//7-19, 699//8-16, situated at village Bhushan Kalan as per jamabandi for the year 2000-2001 on the allegations that he along with other shareholders had sown the mustard crop on that land and the respondent had no concern therewith. To contest the suit, respondent filed a written statement denying all the allegations of the plaint and also filed a counter-claim stating that the appellant was not a shareholder in suit land and the respondent never interfered in the appellant's land, rather, the appellant encroached upon land measuring 2 marlas comprised in Khasra No.713 and Khasra No.699 illegally and forcibly. Land comprised in Khasra No.713 was got demarcated on 19.01.2004 and appellant was found

to be encroacher in respect of land measuring 2 marlas. Possession of the land so encroached upon by the appellant was sought in the counter-claim.

On completion of pleadings, court of learned Civil Judge (Senior Division), Narnaul ('trial Court' – for short) formulated issues. Parties adduced evidence.

Learned trial Court on hearing counsel for the parties and appraisal of evidence decided the matter in the following terms:-

“In view of the above said discussion, the suit of plaintiff as well as counter claim of the defendant succeeds and the plaintiff is entitled to get possession of the land measuring 2 marla comprised in khewat No.80 min khatoni no.93 mustil and killa no. 257//7-19, 699//8-16 ask per jamabandi for the year 2000-2001 situated at village Bhushan Kalan Tehsil Narnaul and the defendant is also entitled to get the possession of the land measuring 2 marla comprised in khasra no.713 and khasra no.699 situated at village Bhushan Kalan, Narnaul with no order as to costs. Decree sheet be drawn up accordingly. File be consigned to record room after due compliance.”

Civil Appeal No. 89 of 2011 brought by the appellant was also dismissed by the learned Additional District Judge, Narnaul ('first appellate Court' – for short), vide judgment/decreed dated 21.05.2012.

The appellant assails the findings recorded by the courts below.

I have heard learned counsel of the appellant.

It is argued that demarcation report proved on record by DW-4 Kanungo Naurang is not as per provisions of law and the relevant revenue records were not taken note of by the Local Commissioner at the time of carrying out the demarcation.

A perusal of the record shows that the demarcation was carried out by Kanungo Naurang strictly according to the procedure laid down for *Had Shikni* cases. Report has been proved on record as Exhibit DW4/A. The witness, DW4, Naurang, was cross-examined on behalf of the appellant and no revenue record which according to the counsel for the appellant was left out by the witness was put to him. In fact, the learned first appellate Court dismissed the appeal by observing as under:-

“8. *The judgment rendered by the learned Trial Court has been mainly assailed on the ground that the demarcation report Ex.DW4/A to Ex.DW4/C made by the local commissioner is incorrect. I have carefully gone through the demarcation report Ex.DW4/A read with Exhibit DW4/B and oral statement of Kanungo Naurang DW4, who appeared and proved the demarcation report. Naurang produced on record file no.18 decided on 19.10.2002 regarding application for demarcation moved by Rampat son of Murli r/o Bhushan Kalan. The certified copy of the reports is and the site plan Ex.DW4/B prepared by him whereas Ex.DW4/A is list of persons present at the time of demarcation. He brought out that he made the report as per the spot. He was*

cross examined at length but his report could not be shattered. He clearly brought out that there is a red stone on north western corner of Mustil no.68, which is near khasra no. 711. He had made measurements from the red stone as the pucca point. He also stated that though he has not shown the same in his report but he had satisfied himself regarding the red stone that it was correctly placed near khasra no.711. He also admitted that he did not show other red stone toward southern side nor he had shown square system and explained that he could not show the square system because number of papers are required for the same. He also stated that the red stone in mark B was also found correct at the time of measurement during consolidation proceedings and the persons present at the spot had admitted it to be correct. He also stated that measurement was done on the western side also but its number was not recorded. In the western side at khasra no.716 min measurement was done from South-west and was found correct. He did not measure mark H from any side but mark A was confirmed from mark C, which falls on north side. Which is pucca point of red dora. Mark C was confirmed from mark B and not confirmed from any other. He stated that he made measurement from three sides. No pucca point was made from east side. He

clearly stated that demarcation was one by installing the flag from mark A, B, C and by making line on the sought of khasra No.698, 699 and 257 and three numbers were found correct. It is denied that he produced wrong report and record was not prepared as per demarcation. Thus, he was subjected to detailed cross-examination but no substantive fault could be found in his report. Merely because certain facts were not mentioned in report is not sufficient to throw out report unless the same is found to be correct or such facts falsify the report. A perusal of report Ex.DW4/A shows that pucca points has been established on the spot. No fault can be found with the said report Ex.DW4/A read with site plan Ex.DW4/B.”

Learned counsel for the appellant is not able to point out any illegality or irregularity either in the findings recorded by the first appellate Court or in the demarcation report (Exhibit DW4/1). From the report it is clearly made out that the appellant is the person who had encroached upon the land belonging to the respondent and that being so the judgments/decrees passed by the courts below cannot be interfered with, more so, because the appeal is not shown to involve any question of law much less a substantial one.

Dismissed.

No costs.

January 06, 2015
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[Mahavir S. Chauhan]
Judge