

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2568 of 2013 (O&M)
Date of Decision.14.12.2015

Santokh Singh

.....Appellant

Vs.

Smt. Surjit Kaur and others

.....Respondents

Present: Mr. Jaideep Verma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

-.-

K. KANNAN J. (ORAL)

1. The defendant filed a suit contending that the septic tank constructed abutting a road and opposite his house and shop fell within the khasra No.813 that had been purchased by him through five documents of sale deed. The defendant's contention was that the septic tank was not situate in khasra No.813 but it was actually in the road which vested with the Panchayat. The contention was that the septic tank had been above the surface of the road and it was causing obstruction to the public. The defendant was making reference to the fact that when the septic tank was constructed, the plaintiff was called upon to remove it and when a dispute arose, the property was actually demarcated to identify the exact location of Khasra No.812 and where the septic tank was situate. The Naib Tehsildar was reported to have appointed one Mohan Singh Kanungo in the case with the direction to make demarcation of khasra No.812 who submitted his report on

9.12.1999 after visiting the spot. The report showed that the septic tank had been constructed in the public passage and when he was directed to remove the same, he filed originally a suit later withdrew it and he has again filed the present suit to make an assertion over a portion of property describing it wrongly as situate in khasra No.813 when the septic tank was actually in khasra No.812.

2. The whole dispute, therefore, was with reference to the actual location of the septic tank opposite to the plaintiff's house of whether it falls within the khasra No.813 which belonged to the plaintiff by virtue of purchase or within the extent of khasra No.812 which was a part of public passage. The plaintiff was relying upon a commissioner's report who was said to have demarcated the property as falling within khasra No.812. In the cross-examination of the witness, he admitted that he did not measure the area which fell within the khasra No.811 and 812. He also admitted that he did not start the measurement from the murba line or killa line to complete the area of khasra No.813. He would also admit that he did not identify a pucca point for carrying out the demarcation in South corner which was in khasra No.824.

3. If the plaintiff was suing for declaration of right to the property identified as red colour and he was trying to prevent an attempt of demolition of the septic tank by the government functionaries, he was required to prove that the septic tank was actually situate within khasra No.813. A report drawn by a person who admitted that he was not identifying any other adjacent khasra numbers 811, 812 or 824 for identifying the exact measurement of 813, was giving a report which was wholly faulty. The Court below was justified in making reference to the

fallibilities of the report and declining to the plaintiff the relief as he was seeking for. It must be noticed that it was not as if the demarcation had never been done. On the other hand, it was brought out that it was done even in the year 1999 and the sceptic tank was found only to be situate along the passage.

4. The counsel says that fresh demarcation can be done if the report filed already before the Court below was defective. I cannot afford to the plaintiff a benefit which he ought to have before the Courts below, when the nature of evidence which was let in on his behalf through a commissioner was found to be not trustworthy at all.

5. I will make no intervention with the judgments of the Courts below. There involves no substantial question of law for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

December 14, 2015
Pankaj*