

106

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

RSA NO. 3004 OF 2013

Date of Decision: 03.12.2015

Hari Singh and Ors.

-Appellants

Vs.

Amar Singh and anr.

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh Lamba, Advocate
for the appellants.

RAJ MOHAN SINGH, J. (ORAL)

CM NO. 7982-C of 2013

For the reasons mentioned in the application, delay of
05 days in filing the present appeal is condoned.

Application stands disposed of.

RSA NO. 3004 OF 2013

Plaintiff is in second appeal against concurrent
judgments and decrees passed by the Courts below in a suit for
permanent injunction and mandatory injunction. Plaintiff alleged
that he is in possession of the suit land measuring 5 Marlas

which has been shown as Gair Mumkin Gait.

Five months ago, defendant No. 1 encroached upon 1-7/9 marlas. Similarly, defendant No. 2 also encroached upon 2-7/9 marlas of the land out of aforesaid suit land of 5 Marlas. Plaintiff alleged that on 25.06.2007, there was a demarcation conducted in which encroachment by the defendants was proved in the form of construction of temporary sheds by them. Further, threats given by the defendants ultimately prompted the plaintiff to file the suit in question.

The suit has been contested by the defendants on all possible grounds. On merits, defendants have claimed that they are owner in possession of Khasra No. 64 whereas suit land is situated in Khasra No.63. Trial Court dismissed the suit on the ground that no witness of demarcation has been examined. The document itself does not speak of the fact. Mere tendering of document does not dispense with proof of its execution. Plaintiff remained successful before the lower Appellate Court as well.

I have heard the arguments of learned counsel for the appellants at some length.

Learned counsel for the appellants contends that plaintiff is in possession of Khasra No.63 as Gair Mumkin Gait under one Dev Karan. Demarcation Ex.P2 took place on 25.06.2007 on the basis of order dated 18.06.2007 passed by Assistant Collector IInd Grade, Hathin. Amar Singh has

encroached upon 1-7/9 marlas of the Khasra No.63 whereas Hukam Chand has encroached upon 2-7/9 marlas of the Khasra No.63.

The solitary evidence on which the entire case of the plaintiff is based is the demarcation report. Concededly, except the demarcation report, there is no connecting evidence to show execution of the demarcation with reference to the examination of Local Commissioner/Kanungo.

It is a settled principle of law that mere tendering of document does not dispense with proof of its execution. For want of evidence, both the Courts have discarded this document. The questions of law as formulated in para No.14 of the Grounds of Appeal are not the questions of law much less substantial questions of facts.

Having considered the controversy, this Court does not find any cognizable evidence worth consideration of the appeal. Consequently, this appeal is dismissed.

DECEMBER 03, 2015

jyoti

**(RAJ MOHAN SINGH)
JUDGE**

