

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

RSA No.152 of 2015 (O&M)

Date of Decision: 15.07.2015

Narinder

.....Appellant

Versus

Ram Mehar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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. Rajesh Bansal, Advocate,
for appellant.

SHEKHER DHAWAN, J

Present regular second appeal is challenge to judgments of both the Courts below whereby the Court of first instance decreed the suit of plaintiff for possession and Court of first appeal dismissed the appeal.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of the present appeal that plaintiff Ram Mehar and others filed suit for possession on the ground that Bhartu and Sarupa sons of Shiv Dayal were the recorded owners in possession of land. Bhartu died and his share of property belonged to his

widow Smt. Dhanpati Devi, his daughters Santro Devi, Rajesh Devi,

Kamlesh Devi, Veero Devi and his sons Ram Mehar and Krishan Dutt. Thereafter, Kamla Devi and Veero Devi suffered a civil Court judgment and decree dated 19.12.1978 in favour of their brothers Ram Mehar and Krishan Dutt, as such Ram Mehar and Krishan Dutt became owner in possession in equal shares of 1/2nd share whereas plaintiff No.3 Sarupa is the owner in possession of other 1/2nd share in the land measuring 65 kanal 13 marla. It was the case of plaintiff that defendants were trying to take forcible possession of the suit land which was belonging to Kabristan. The demarcation of suit land was done on 03.01.2008 by Tehsildar, Samalkha and defendants were found to be in unauthorized possession over the suit property and had raised construction over the same.

4. Defendants took the plea that construction was in existence from the last more than 100 years. No encroachment was ever made by defendants on the land of plaintiff. This was in the knowledge of the plaintiffs that demarcation was not done as per the instructions of the Financial Commissioner. Signatures of several persons including defendants were obtained on blank papers whereas in fact no demarcation was done on the spot.

5. Court of first instance appreciated the oral as well as documentary evidence and returned the findings that plaintiffs have been able to prove that the defendants have encroached upon the suit property comprised in Khewat No.246, Khatoni No.285, Khasra No.237 and Khasra No.23 of Rect. No.35 Village Ata, District Panipat which stands in the name of the plaintiffs and other co-owners and as such they are entitled to receive back the possession. Defendants challenged the said judgment and decree by way of first appeal and remained unsuccessful, hence the present appeal.

6. Learned counsel for appellant took the plea that the Courts below have placed reliance upon demarcation report whereas no opportunity was given to appellants to file objections against the report of Local Commissioner which was against the settled proposition of law and instructions issued by Revenue Department in this regard. No *pucca* points were determined and the demarcation proceedings are sham transaction. So the said report be set aside and judgment and decree passed by both the Courts below on the basis of said demarcation report be set aside.

7. Having considered the submissions made by learned counsel for the appellant this Court is of the considered view that both the Courts below have already appreciated the evidence available on file including demarcation report. The plea regarding discarding of demarcation report Exhibit PW-3/A was also taken before the Courts below. It was rightly observed that Naveen Kumar was examined as PW-3 who had done the demarcation and the same was proved and his report Exhibit PW-3/A was proved as per his statement. The objections were taken regarding demarcation report but there no material was produced before the Court. Rather Exhibit PW-3/A established that the demarcation was done in the presence of both the parties and in presence of independent persons by revenue official in discharge of his duty. The possession on the suit land stands proved on the basis of Jamabandi for the year 2001-02 (Exhibit P-2).

8. This being the Regular Second Appeal against concurrent findings of both the Courts recorded on the basis of facts and evidence available on file and as such, the same is not maintainable. Present Regular Second Appeal is not maintainable as per provisions of Section 100 of Code of Civil Procedure as there is absolutely no substantial question of law

involved calling for interference by this Court. Such a law was laid down by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (dead) by LRs., 2001(3) SCC 179.**

9. In view of the above, Regular Second Appeal stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

July 15, 2015
msd