

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

**SAO No.32 of 2013 (O&M)
Date of Decision:19.02.2015**

Mohanjit Singh

. . . . Appellant

Vs.

Joginder Pal Verma and another

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Amit Dhawan, Advocate,
for the Appellant.

Mr.Amit Jhanji, Advocate,
for respondent No.1.

RAKESH KUMAR JAIN, J.

The defendant No.1 is in appeal against the order dated 29.4.2013, remanding the case back to the trial Court with the direction that it will appoint a Senior Revenue Officer for demarcation of suit property at the cost of the plaintiff and if the defendants are found to be in possession, it would further consider as to whether the decree for possession could be passed or not.

In brief, the plaintiff filed a suit for declaration that he is owner of 4 marlas of land comprised in khasra No.27614/18049/4277 falling in Hadbast No.307/5, Khewat No.6332, Khatoni No.7868, in the area of Model Town, Jalandhar.

The trial Court had found that initially Khasra No.27614/16045 was shown in the ownership of the father of the plaintiff and thereafter in the ownership of the plaintiff but later on khasra No.4277 was also found mentioned in the jamabandi after 1989-90. It was further observed that though 'fard badar' took

place but all the jamabandis were completely silent about this fact and there was no red entry in regard to the change in the khasra number in all the jamabandis.

The trial Court, thus, did not accept the demarcation report being related to the property in dispute and held that he has failed to show that the property in dispute was originally under the ownership of his father and thereafter under him. The suit was thus dismissed.

In appeal, it was observed that the suit of the plaintiff is based upon the demarcation report dated 17.3.2006, obtained by him earlier to the filing of the suit but it was for the trial Court to find out the location of the suit property if it had not accepted the report of the demarcation, relied upon by the plaintiff, prepared earlier to the filing of the suit.

Learned counsel for the appellant has further submitted that once the plaintiff had relied upon a demarcation report, which might have been obtained by him before the filing of the suit and has been found to be not connecting with the suit property, the Appellate Court had no jurisdiction to allow the plaintiff to improve his case while seeking a fresh demarcation of the property in dispute.

Learned counsel for respondent No.1, however, has submitted that there is no error in the order of the learned Lower Appellate Court in remanding the case back because the fresh demarcation report would decide about the identity of the suit property.

I have heard both the learned counsel for the parties and after examining the available record, am of the considered

opinion that the Appellate Court has committed a patent error of law in allowing the appeal, setting aside the judgment and decree of the trial Court and remanding the case back to it with a direction to re-demarcate the suit property. As a matter of fact, the plaintiff has come to the Court with a demarcation report which he has failed to prove being connected with the property in dispute and as such his suit was dismissed. The Appellate Court has thus, wrongly observed that if the demarcation report, relied upon by the plaintiff in the suit, is not accepted by the trial Court, it should have again demarcated the suit property without there being any application filed on behalf of the plaintiff, who was sanguine of the success of his case on the basis of demarcation report already in his possession.

Hence, in view of the aforesaid discussion, the present appeal is found to be meritorious and the same is allowed and the order passed by the Lower Appellate Court is hereby set aside.

19.02.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**