

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

**RSA No. 2670 of 2015 (O&M)
Date of decision: 21.09.2015**

Baldev Singh and another

... Appellants.

versus

Gurmit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jagram Singh Cooner, Advocate for the appellants.

K.Kannan, J.

The defendant is the appellant before this Court. The suit for possession was sought by the plaintiff on a plea that the defendant had encroached upon his land. The encroachment was sought to be established by having a property demarcated by the Kanungo. The report of the demarcation showed that the defendant had encroached upon the portion of the plaintiff's land. The contention in defense was that the measurements had not been properly carried out and only one survey stone had been located and the correctness of its location could not be verified with reference to any other survey stone. Consequently, the so-called encroachment was not properly assessed and the Court cannot act on the defective report given by the Kanungo.

At the trial, the whole focus was on whether it was possible to carry out survey at the land and assess the issue of demarcation and encroachment with only through one *burji*. The PW-3 answered in the cross-examination that only one survey *burji* was available and there was no other but the defendant deposed that yet another *pucca burji* was far away and only one was found at the spot and that there was no other *burji* available. The Court, therefore, observed that if there was only one available at the spot and there was affirmation that it was possible to carry out a survey with one surely established *burji*, there

was no need for doubting the correctness. The court also observed that the defendants had originally denied that the survey was done in their presence but it was clear through the evidence that the defendants themselves were actually present at the time when the property was surveyed. If they were actually present, the Court was satisfied that PW-3 had done everything that was possible. Initially, when no survey *burji* could be identified, a JCB machine was requisitioned and finally identified and the procedure for such identification and report had not been traversed in the written statement especially with the demarcation was anterior in point of time. The manner of assessment of the encroachment has been done after a survey of the land with the help of the village officials who were competent to do so and the matter must rest there, for, there involves no substantial question for consideration in the appeal brought by the defendants.

There is no merit in the regular second appeal and is consequently dismissed.

(K.KANNAN)
JUDGE

21.09.2015

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