

RSA No.3627 of 2015 (O&M)

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

RSA No.3627 of 2015 (O&M)

Date of Decision: October 19, 2015

Kamrudeen and others

...Appellants

Versus

Krishan

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Ashok Kumar, Advocate and
Mr. Amit Kumar Ghosh, Advocate
for the appellants.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgment and decree dated 29.05.2015 passed by the Additional District Judge, Jhajjar, whereby, appeal against the judgment and decree dated 02.08.2013 passed by the Additional Civil Judge (Senior Division), Jhajjar, vide which, suit preferred by the respondent-plaintiff for possession and permanent injunction was dismissed, stands allowed.

It is the contention of the learned counsel for the appellants that the Lower Appellate Court has merely relied upon the demarcation report (Ex.P-1), site plan (Ex.P-2) as also the attendance sheet (Ex.P-3) to come to a conclusion that there is an encroachment by the appellant-defendants of two marlas in the plot

No.165 owned by the respondent-plaintiff. He contends that the said demarcation report was not prepared in the presence of the appellant-defendants. Assertion has also been made that the findings recorded by the Local Commissioner is based upon an *aks sajra* which has not been proved by the respondent-plaintiff. His further contention is that there are discrepancies in the statement of the plaintiff as also that of the Local Commissioner as the Local Commissioner asserts that there is no 'Gali' touching the plot of the respondent-plaintiff, whereas, Phool Kumar who appears as PW-1, states that there is one. He, thus, contends that the findings recorded by the Court below cannot sustain as it is not based upon the proper appreciation of the pleadings and the evidence brought on record.

This contention of the learned counsel for the appellants cannot be accepted in the light of the fact that the respondent-plaintiff had himself appeared as PW-3 and supported his case and also produced relevant revenue record about the ownership of the plot and the area thereof. On the basis of the evidence which has been brought on record, the Local Commissioner had submitted his report after visiting the spot which has been duly proved. As per the said report, an encroachment of two marlas by the appellant-defendants has been found on the plot in dispute. The appellant-defendants have not been able to dent the evidence of the Local Commissioner.

The attendance sheet (Ex.P-3) indicates that the appellant-defendants were present at the time of demarcation, however, they refused to sign the same. The assertion that appellant-defendants were not present at the time of demarcation, cannot be accepted as no objection to the demarcation report submitted by the Local Commissioner, has been filed. Although an argument has been raised by the learned counsel for the appellants that even if the report of the Local Commissioner is accepted as it is, the encroachment would only come to one marla but since no objection to the demarcation report has been filed and further nothing has come out in the cross-examination of the Local Commissioner Tara Chand who appeared as PW-2 who had proved the site plan also that the encroachment was of only one marla and not two marlas, the findings which have been recorded by the Courts below with regard to the area encroached i.e. two marlas, cannot be faulted with.

On perusal of the judgment which is impugned, it is apparent that the First Appellate Court has rightly appreciated the pleadings and the evidence which has been brought on record and accordingly, given its findings which do not call for any interference by this Court.

In view of the above, finding no merit in the present appeal, the same deserves dismissal, especially when no substantial question of law arises for consideration of this Court.

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The appeal, accordingly, stands dismissed.

CM No.8827-C of 2015

In view of the order passed in the main appeal, the present application for stay has become infructuous.

Disposed of as such.

October 19, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**