

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

RSA No. 3662 of 2015 (O&M)
Date of decision 06.08. 2015.

Roop Singh and another Appellants.

versus

Baldev Singh and others Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. R.V.S. Chugh Advocate for the appellants.

K.C.PURI, J.

C.M. No.9011-C of 2015.

For the reasons mentioned in the application, delay of 34 days in filing the appeal stands condoned. CM stands disposed of accordingly.

MAIN CASE

Defendants-appellants-Roop Singh and Balvir Singh have directed the present appeal against the judgment and decree dated 20.11.2014 passed by Ms. Rajwinder Kaur, learned Additional District Judge, Bathinda vide which the appeal against the judgment and decree dated 18.11.2013 passed by Mrs. Gagandeep Kaur, learned Civil Judge (Junior Division), Talwandi Sabo, was dismissed.

2. Briefly stated the case of the plaintiffs is that they are owners of the suit property and a year ago (from the filing of the original suit)

defendants encroached upon their land by way of Doll Shikni and came in illegal possession over the suit property. Thereafter, Teja Singh, father of the plaintiffs moved an application for demarcation and their land was demarcated on 19.07.2011 by revenue officials in the presence of witnesses and defendants were found in illegal possession over suit land i.e., land measuring 20marlas. Defendants refused to vacate the suit land. Hence, the present suit.

3. Upon notice, defendants appeared and opposed the claim of the plaintiffs by filing written statement. They took certain preliminary objections, inter alia, that the suit of the plaintiffs is not at all maintainable; no locus standi or cause of action, plaintiffs have not come to the Court with clean hands and have concealed true facts from the court ; suit of the plaintiff is false, frivolous and vexatious to the knowledge of the plaintiffs. On merits, defendants alleged that they are neither in illegal possession over the suit property nor encroached upon the suit property. Khasra numbers of the suit land adjoins their land where their residential houses are in existence. Moreover, plaintiffs are falsely alleging that they are owners of the suit property in order to grab their property under the garb of false and illegal demarcation report which was not made according to rules and was not made by locating Pakka Thadda points. Denying other averments, respondents prayed for dismissal of the suit.

4. From the pleadings of the parties, following issues were framed by the trial Court :-

1. Whether the defendants have encroached upon the suit land of plaintiffs ? OPP

2. If so, whether the plaintiffs are entitled to recover possession of the same ? OPP
 3. Whether suit of the plaintiffs is bad for concealment of facts ? OPD
 4. Relief.
5. On the aforesaid issues, the parties have led their respective evidence. The trial Court after appraisal of the evidence, decreed the suit of the plaintiffs vide judgment and decree dated 18.11.2013.
6. Feeling dissatisfied with the judgment and decree dated 18.11.2013, defendants preferred First appeal before Additional District Judge, Bathinda. The learned Additional District Judge, Bathinda after re-appraisal of the evidence, dismissed the appeal of the defendants vide judgment and decree dated 20.11.2014.
7. Defendants-appellants feeling aggrieved against the judgment and decree dated 20.11.2014 and judgment and decree dated 18.11.2013 have preferred the present regular second appeal, before this Court.
8. The appellants in paragraph No.09 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-
- (a) Whether the deposition of a witness can be read into evidence and can be relied upon though the said deposition is without oath ?
 - (b) Whether the demarcation of the land can be held to be correctly conducted though the same is conducting without locating the Pakka thadda and without drawing “jarib”?
 - (c) Whether the demarcation of the land can be held to be correctly conducted though the same is conducted during

the period of standing crops ?

(d) Whether the judgments and decrees of Ld. Courts below are based on misreading of the evidence on record ?

9. I have heard learned counsel for the appellant and have gone through the paper book of the case.

10. Learned counsel for the appellants has submitted that suit of the plaintiffs has been decreed on the ground of demarcation report Ex.PA. It is submitted that the demarcation was conducted by the revenue official when the crop was standing and in such situation, proper demarcation cannot be done. The said demarcation is not in accordance with the rules prescribed under the Land Revenue Act and as such the same is required to be ignored. Learned counsel for the appellant has relied upon the report of Kanungo, who submitted the second demarcation report. The said demarcation report cannot be read into the evidence as that Kanungo has not been produced in the Court. So, it is submitted that both the Courts below have wrongly decreed the suit of the plaintiffs. So, the judgments and decrees of both the Court below are the result of misreading and misinterpreting the evidence available on the file.

12. I have considered the submission made by counsel for the appellants.

13. The plaintiff has filed suit for removing the encroachments. The only way to find out the encroachment is demarcation of the land of both the parties. The demarcation report was proved by the plaintiffs by examining Gurmail Singh Kanungo (PW-1). The defendants-appellants have challenged the said report on the ground that there can be error in the

measurement as demarcation was done by the said Kanungo Gurmail Singh while crop was standing on the suit land. The learned trial Court, in order to clear the doubt, got the report of Nachhattar Singh Kanungo. He has also pointed out the factum of encroachment by defendants/appellants into the land of the plaintiffs. So, both the Courts below have given a definite finding that defendants have encroached upon the land of the plaintiffs regarding which decree of possession has been passed. There is nothing on the file that concurrent finding of fact recorded by both the Courts below regarding demarcation is wrong. Demarcation has been conducted twice and no rebuttal evidence has been produced by the defendants/appellants. There is nothing on the file that finding of the trial Court regarding the suit land is passed by misreading and misinterpreting the evidence. Counsel for the appellants has not stated which of the evidence has not been considered and how the trial Court has misread and misinterpreted the evidence on the file. So, it was a question of fact whether there was any encroachment and in view of the concurrent finding recorded by both the Courts below, I have no hesitation in holding that no question of law, much-less the substantial question of law has arisen in the present appeal.

14. Consequently the appeal preferred by the defendants-appellants is without any merit and the same stands dismissed.

15. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 06, 2015

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