

RSA No.3776 of 2015 (O&M)

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

RSA No.3776 of 2015 (O&M)

Date of Decision: September 14, 2015

Bakhshish Singh @ Bagga Nihang

...Appellant-

Versus

Lakhbir Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vinay Pandey, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.9261-C of 2015

Prayer in this application is for condonation of delay of 36 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 36 days in filing the appeal stands condoned.

RSA No.3776 of 2015

Challenge in this appeal is to the judgments and decree passed by the Courts below, whereby, the suit for possession of the land measuring 23 Kanals and 11 Marlas, details of which have been mentioned in the head note of the suit, situated in village Mand Allahbad, Tehsil Bholath, District Kapurthala and for recovery of *mesne profits* for illegal use and occupation of the suit land since November, 2006, stands decreed and appeal preferred by the

appellant-defendant dismissed by the District Judge, Kapurthala.

It is the contention of the counsel for the appellant that the Courts below have not rightly appreciated the evidence on record and have wrongly relied upon the demarcation report (Ex.P-1). He contends that as per the demarcation report (Ex.D-1), the appellant-defendant was not found to be in illegal possession of the land of the respondent-plaintiffs. The said demarcation report should have been relied upon by the Courts below and subsequent demarcation report (Ex.P-1) could not be taken into consideration by the Courts below for the reason that the said demarcation was carried out in the absence of the appellant-defendant.

This contention of the counsel for the appellant cannot be accepted as while rejecting the first demarcation report (Ex.D-1), findings have been recorded by the Courts below that the said demarcation was not carried out as per the instructions of the Financial Commissioner, Punjab which required the identification of the pucca points before conducting the said demarcation. It is not in dispute that while conducting the said demarcation report (Ex.D-1) the pucca points and its location was not determined, in the absence of which, the proper demarcation could not be conducted and therefore, the demarcation report (Ex.D-1) has rightly been discarded by the Courts below.

As regards the demarcation report (Ex.P-1) which has been duly proved on record, the same was carried out when the

appellant-defendant had given his consent for conducting of the said demarcation proceedings vide his statement dated 17.05.2007 which was proved on record as Ex.DW2/P1. This consent has also not been denied by the appellant when he stepped into the witness-box. It has come on record that the demarcation report (Ex.P-1) was prepared and proceedings were conducted under the supervision of one Naib Tehsildar and with the assistance of Surinderpal Singh, Halqa Kanungo, Jasbir Singh, Patwari Halqa Ibrahimwal, Jaswant Singh Patwari and also in the presence of ASI Joginder Singh, HC Kulwant Singh and HC Malkiat Kaur etc. No objection was raised during the demarcation proceedings. It is correct that at the time when the officials reached the spot, the appellant-defendant was not present but thereafter, at the actual time of demarcation, he had come present. This aspect has come in the statements of the witnesses. As per the demarcation report (Ex.P-1), appellant-defendant was found to be in illegal possession of the suit land belonging to the respondent-plaintiffs and therefore, the findings have rightly been recorded by the Courts below with regard to the illegal possession of the appellant-defendant.

The *mesne profits* as have been determined by the Courts below also cannot be faulted with, although an objection has been raised by the counsel for the appellant-defendant that since November, 2006 when the respondent-plaintiffs alleged that the appellant-defendant had come into possession, they had not taken

any effective steps for dispossessing the appellant-defendant.

This contention of the counsel for the appellant-defendant cannot be accepted in the light of the fact that earlier, respondent-plaintiffs had initiated proceedings under Section 145 Cr.P.C. which they had withdrawn and then, initiated proceedings under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, which have been withdrawn by them which was with regard to the demarcation of the hadbandi of the village. It cannot, thus, be said that the respondent-plaintiffs had been sleeping over the matter. In any case, the suit is undisputedly within the time and the proceedings which have been initiated, thus, cannot be said to be without any jurisdiction.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 14, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE