

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

RSA No.3974 of 2015 (O&M)

Date of Decision: December 04, 2015

Jarnail Singh

.... Appellant

vs.

Mukhtair Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Mohit Garg, Advocate for the appellant.

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

Kuldip Singh J.(Oral)

CM-9698-C-2015

There is delay of 69 days in refiling the present appeal.

For the reasons mentioned in the application, supported by an affidavit, delay of 69 days in refiling the present appeal is condoned, subject to all just exception.

Application stands disposed of.

RSA-3974-2015

Impugned in the present regular second appeal is the judgment and decree dated 26.09.2014 passed by learned District Judge, Sangrur, affirming the judgment and decree dated 29.11.2012 passed by learned Addl. Civil Judge (Sr. Divn.), Sangrur, vide which the suit of the plaintiff for possession was decreed and the defendant

was directed to hand over the possession of the suit land, as fully detailed in the head note of the plaint, to the plaintiff within two months from the date of decree, failing which, plaintiff would be at liberty to take the same with due course of law.

Before the lower court, the plaintiff claimed that he is co-sharer to the extent of 1/4th share in land bearing khasra No.398//22/2(6-8), 23/1(5-0), 23/2(3-0). The land of the defendant adjoined to his land and the defendant had encroached upon his property measuring 1 karam x 72 karam, which comes to 0 kanal, 8 marla.

In the written statement, the defendant had denied the encroachment and had also denied the demarcation made by the revenue authorities as incorrect.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

Before the lower court, the demarcation report was produced, which shows that at the time of demarcation, the defendant refused to come present and did not append his signatures on the same. In the demarcation report, the said encroachment was found.

Before the lower court, the defendant did not move any application for fresh demarcation after the filing of the suit on the ground that his land was not demarcated as sought to be pleaded before this Court. Therefore, the findings of the facts were recorded by the lower court and the same were affirmed in appeal.

Before the lower court, it was argued that the land of the defendant-appellant also should have been demarcated to find out the encroachment.

However, despite opportunity, the defendant did not lead any evidence that he had not made any encroachment. He had never prayed for fresh demarcation on the orders of the civil courts. Therefore, at this stage of regular second appeal, such prayer cannot be entertained.

It is contended that the defendant is one of the co-sharers and other co-sharers were not made the party.

However, it is not denied that said land is in possession of the defendant only. Therefore, such objections cannot be raised before this court to defeat the claim of the plaintiff. Since, the defendant was in possession of the disputed land, therefore, the decree was passed against him. There are concurrent findings of both the courts below. No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

December 04, 2015
sarita

(KULDIP SINGH)
JUDGE