

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

CR No.5690 of 2016(O&M)

Date of decision:2.9.2016

Phool Singh and others

....Petitioners

VERSUS

Lal Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Yadav, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 17.08.2016 passed by Civil Judge (Junior Division), Rewari whereby application filed by the petitioners/defendants for demarcation of suit property namely Khasra Nos.87(0-18) and 62(1-1) has been dismissed.

Counsel for the petitioners has submitted that there is a serious dispute between the parties if the respondents/plaintiffs have encroached upon land belonging to the petitioners or other way round. The respondents/plaintiffs have filed a suit for possession on the allegations that the petitioners/defendants have encroached upon land belonging to them and raised construction thereon. The respondents/plaintiffs produced on record two demarcation reports dated 02.11.1988 and 21.05.2005 allegedly got conducted by father of the defendants. In addition, demarcation reports dated 23.01.2009, 03.02.2011 and 28.07.2012 are on record. It is submitted that all these demarcations were not conducted during pendency of the proceedings before the trial Court and the reports do not tally with each other. It would be in the fitness of things, if a revenue official is appointed as a local commissioner for conducting demarcation at the spot so that dispute between

the parties is set at rest for all the times to come. Another submission made by counsel is that the petitioners have offered that in case as per demarcation conducted in pursuance of application filed by them, it was found that they have encroached upon any part of land belonging to the respondents/plaintiffs, they will raise no objection if the suit is decreed.

I have heard counsel for the petitioners, perused the paper-book particularly the order impugned.

Be that as it may, it is an undisputed position of the case that five demarcation reports are already part of the records of the Court below. The respondents/plaintiffs have relied upon demarcation reports dated 02.11.1988 and 21.05.2005 stated to be got conducted by father of the petitioners/defendants. As there are already five demarcation reports available on record, no error much less illegality can be noticed in the order impugned whereby the Court has refused to exercise jurisdiction under Order 26 Rule 9 of the Code of Civil Procedure, 1908 in favour of the petitioners. Nevertheless, the Court would be at liberty to seek any fresh demarcation report if at the time of disposal of the suit on merits, any such demarcation would be necessary, in the interest of justice.

With these observations, the petition stands disposed of.

SEPTEMBER 2, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no