

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1489-1988 [O&M]

Date of Decision : February 3rd, 2016

Raj Mal and others

.... Appellants

Versus

Gulzari and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers 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?

Present Mr. O.P.Sharma, Advocate,
for the appellants.

Mr. Mani Ram Verma, Advocate,
for the respondents

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, suit filed by the plaintiffs [respondents herein] for possession of the suit property was decreed by the Court of First Instance vide judgment and decree dated 11.06.1987. The appeal filed by the present appellants was dismissed by learned Additional District Judge, Bhiwani vide judgment and decree dated 28.04.1988.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiffs filed a suit for possession in respect of the suit land comprising in Khewat No. 121, Khatoni No. 371 and Khasra No. 376

...

measuring 29 Bigahs 2 Biswas, situated within the revenue estate of Village Sandwa, Tehsil Siwani, District Bhiwani owned by the plaintiffs and proforma respondents. Chandgi died and thereafter plaintiff and proforma respondents and their legal heirs were impleaded. Defendants are also residents of the same village – Sandwa and their land is in the abadi which is adjoining the agricultural land of the plaintiffs and is comprised in Khasra No. 376. The plaintiffs suspected that the defendants may encroach upon their land and got the demarcation done through Tehsildar with the help of Kanungo. Spot inspection was done by the Kanungo on 27.8.1982 and the report was submitted and it was found that the defendants were in unauthorized possession on the part of agricultural land of the plaintiffs as shown in letters ABCD in red colour, measuring 1 Bigha and 4 Biswas. Request was made to the defendants to remove the unauthorized possession over the suit land, but to no effect and as such necessity of the suit.

4. Defendants took the plea that they were not in unauthorized possession of the suit land and prayed that the suit be dismissed.

5. On the pleadings of the parties, issues were framed and after appreciating the entire evidence brought on record by the parties, the Court of First instance decreed the suit of the plaintiffs that they are entitled to the possession of the land measuring 19 Biswas of khasra No. 376 as given in the report of Naib Tehsildar [Ex.PW3/2]. Defendants were also directed to remove their *malba* from the said land as they were found to be in illegal possession of the suit land. The defendants preferred an appeal before the Court of first Appeal but remained unsuccessful and as such, the present Regular Second Appeal before this Court.

...

6. Learned counsel for the appellants submitted that the Courts below have not considered the controversy in its correct perspective because there was absolutely no evidence on record to hold that the land in possession of the appellants-defendants is part of khasra No. 376. He has also submitted that though, the land was demarcated twice, i.e., once by the Kanungo [PW-2] and second time by the Naib Tehsildar [PW-3], the demarcation report was not in accordance with the rules framed under the Land Revenue Act because the Girdawar Kanungo and the Naib Tehsildar had not located three '*Pucca Points*' to demarcate the land in dispute. They simply demarcated the land on the basis of some *do/* which could not be considered to be correct because the land has to be measured after locating three '*pucca points*'. It has also been in the statement of revenue officials, who visited the spot, that they failed to locate three pucca points and as such, the report submitted by the revenue officials cannot be made the basis for holding the appellants to be in unauthorized possession. Naib Tehsildar, as Local Commissioner, demarcated the land from some points known as 'Saheda'. So, there is absolutely no reliable evidence to hold that the demarcation had been done according to the rules and the procedure laid down under the Punjab Land Revenue Act. As per Punjab and Haryana High Court Rules and Orders, Vol. I in cases of 'Hadd-Shikni' i.e. suits involving a dispute as to boundaries, the revenue officials are required to demarcate the suit property by locating three 'pucca points' which has not been done in the present case and the Courts below have recorded the findings which are contrary to law.

7 Learned counsel for the respondents submitted that the

...

demarcation has already been done by two Local Commissioners, who visited the spot and demarcated the land in question and found that present appellants were in unauthorized possession. The Court of first Appeal has dealt with the reports of Local Commissioner and affirmed the findings recorded by the Court of first instance on the basis of available record and thus, the present appeal is without any merit and the same be dismissed.

8. After hearing learned counsel for the parties, this Court is of the view that the following substantial questions of law are involved in the present appeal:-

- i). Whether the demarcation of the suit land was done in accordance with law?
- ii). Whether the Courts below fell in error while interpreting the reports of Local Commissioners and oral evidence?

9. Having considered the submissions made by learned counsel for the parties and on appraisal of the entire record of the case, this Court is of the view that the real controversy involved in this case is whether the present appellants are in unauthorized possession of the suit property or not. Both the Courts below have already recorded findings of fact that the appellants are in unauthorized possession of the suit property. For that purpose, the Courts below appreciated oral as well as documentary evidence and the reports submitted by Jagdish, Kanungo [PW-2] and Jeet Ram, Naib Tehsildar [PW-3]. Now, the question arises whether the reports submitted by these Local Commissioners were in accordance with law and the same could be made the basis by the Courts below to return

...

the findings that the defendants were in unauthorized possession of the suit property.

10. As regards to the oral and documentary evidence available on the file, the Courts below have rightly come to the conclusion that the defendants are in unauthorized possession of the suit property and the plaintiffs are entitled to possession of the land in dispute and the defendants were directed to remove their *malba* from the suit land.

11. As regards to reports of Local Commissioners, undisputedly, the procedure for '*Hadd-Shikni*' i.e, demarcation, has been laid down under Chapter 1-N of the High Court Rules and Orders, Vol. I, which is based on instructions issued by the Financial Commissioner and the relevant text of which is as under:-

“(i). If a boundary is in dispute, the Field Kanungo should re-lay it from the village map prepared at the last Settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map, the position and distance of those points from a line of a square, and then with a chain and cross-staff mark out the position and distance of those points. Thus, he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute, as near to it as he can, and, if possible, not more than 200 *kadams* apart, which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map.....”

12. The above provisions of High Court Rules and Orders makes it ample clear that in case there is dispute with regard to the boundaries, the Field Kanungo is to demarcate the land on the basis of map and *masavvis*

...

and for that purpose, he can set all the points of boundaries which are shown in the map. It is however, made clear that if there is no map on the square system available, then he will have to find three 'pucca points' on different sides and then demarcate the land. In the case in hand, Jeet Ram [PW-3], Naib Tehsildar, who visited the spot after giving due notice to the parties through Chowkidar demarcated the land. The demarcation was done in the presence of Balbir Singh, Patwari Halqa [Consolidation] and Kirpa and Jai Ram, Chowkidars were also present at the spot. Pucca points were present on the *dols* of khasra Nos 376, 375, 377, 351 and 379 which were found to be correct. However, pucca points were taken from *Saheda* where boundary of three villages met. The said measurement was done from Saheda point and with the help of maps and *masavvis*. That way, the demarcation done by Jeet Ram, Naib Tehsildar cannot be said to be not in accordance with rules. Rather, the same is strictly in accordance with the High Court Rules and Orders, Vol. I. The report submitted by Jagdish Singh, Kanungo [PW-2] is also based on facts and to that extent, findings have been recorded by the Court of first Appeal. The the Court of first Appeal has rightly observed that merely not fixing three points at the time of measurement does not make the sanctity of the report doubtful especially when the demarcation was done from Saheda point which is undisputedly a pucca point and no dispute can be raised about the location of Saheda point and thereafter, the demarcation having been done with the help of maps and *masavvis* which is as per the provisions of High Court Rules and Order, as detailed above.

13. Similar view was taken by Hon`ble Himachal Pradesh High Court in **Kanta Dhir and another Vs. Meera Sehgal and another**, 2009 Latest

...

HLJ [H.P.] 1412 where the demarcation was done after locating two pucca points and the Court of first Appeal recorded the finding on the basis of report of Local Commissioner.

14. In view of the above, both the substantial questions of law, posed in para No. 8 above, are answered against the appellants and it is held that the demarcation of suit land has been done in accordance with law and there is no ground to set-aside the reports submitted by Local Commissioners, PW-2 and PW-3. The findings of fact having been returned on the basis of oral and documentary evidence by both the Courts below in this respect are upheld. Resultantly, the present Regular Second Appeal is dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

February 3rd, 2016
som