

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

RSA No.4683 of 2011 (O&M)

Date of decision:05.10.2016

Darshan Singh Bhogal and another

... Appellants

Vs.

Swarna Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajiv Joshi, Advocate
for the appellants.

Mr. A.S.Gill, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, suit for possession of the suit property measuring 2 marlas out of khasra No.464, has been decreed by both the Courts below.

Mr. Rajiv Joshi, learned counsel appearing on behalf of the appellant-defendants submits that PW5 -Harbhajan Dass, Kanungo, had conducted the demarcation report which had erroneously been relied upon by both the Courts below as the same is not in accordance with the High Court Rules and Orders. It has surfaced in the cross examination that in case he was asked to accompany for spot inspection, he was not able to show the survey stone existing at the spot and therefore, the demarcation report could not have been relied upon. The plaintiff has to stand on his own legs. Once

he has failed to discharge the burden, the suit is liable to be dismissed and thus, urges this Court for setting aside the findings under challenge.

Per contra, Mr. A.S.Gill, learned counsel appearing on behalf of the respondent-plaintiff submits that in execution proceedings, the possession of the suit property decreed by both the Courts below has been taken and the execution petition has been ordered to be dismissed as withdrawn. He further submits that the defendants have failed to lead any evidence contrary to the aforementioned report which reveals the encroachment of few marlas and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Joshi, for, the appellants had already taken a plea regarding adverse possession in the alternative. No sane person would take a plea of adverse possession, if he is owner of the property, meaning thereby, the encroachment was there, in essence, the setting up of said plea admitting the possession. The question raised is whether it belongs to other side or whether the appellant-defendants have encroached upon two marlas of land or not, the answer given is in positive. The report of Kanungo reveals that the appellants are in possession of two marlas of excess land comprised khasra No.464 which is equivalent to 7 marlas. The pleaded case of the plaintiff is that during the rainy season, a common wall had broken and the defendants while erecting the same encroached upon the area of the plaintiff.

It is in this background of the matter, the aforementioned suit was filed. Kanungo was extensively cross-examined but nothing contrary, surfaced. Demarcation was done in the presence of the parties and prepared the presence sheet which is Ex.PE bore signatures of both the parties. All these facts have been noticed by both the Courts below, thus, the concurrent findings of facts and law cannot be said to be erroneous, much less perverse.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 05, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No