

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

RSA No.4591 of 2012 (O&M)

Date of decision : 01.03.2016

Charanjit Singh

...Appellant

Versus

Mukhtiar Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Rajesh Narang, Advocate for the appellant.

Mr. R.S. Athwal, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit claiming possession of the site/plot shown red in the site plan attached to the suit after removal of the malba, bearing part of khasra No.5740 as detailed in jamabandi of Jalandhar-II, Hadwast No.307, has been decreed.

Dr. Anmol Rattan Sidhu, learned Senior Counsel assisted by Mr. Rajesh Narang, for the appellant has raised multifold arguments, which are enumerated hereinbelow:-

1. The trial Court on the basis of the oral and documentary evidence found that the respondent-plaintiff failed to prove the alleged encroachment of the area measuring 9 marlas 69 square feet.
2. The demarcation report was done at the back of the appellant-defendant which fact is evident from the report itself.
3. The lower Appellate Court has assigned no reasons in setting aside the findings rendered by the trial Court vis-a-vis rejection of the Demarcation report.
4. The identity of the property has not been proved, in essence, respondent-plaintiff has failed to discharge the onus.
5. Even the plaintiff in cross-examination stated that he had no right and interest in the property which was bounded by property of Hari Singh on the north, property of Central Government on the south, house of Khushi Ram on east and GT Road on west measuring 618 square yards. It has also been proved through the cross-examination of PW3 that no independent witness was examined by the Kanungo while conducting the demarcation report, thus plaintiff has to prove the onus de hors of the fact that the appellant-defendant has failed to prove the ownership, much less, averments made in the written statement and thus urges to this Court to formulate the following substantial question of law culled out in the memorandum of appeal:-

1. Whether learned District Judge has misread the judgment dated 29.01.1993 passed by this Hon'ble High Court and drawn erroneous conclusions?
2. Whether the demarcation done without any notice to the

appellant at his back without observing the rules could be held to be according to the rules?

3. Whether mutation entered on the basis of illegal and invalid sale deed executed by vendors of respondent Nos.1 and 2 without holding any title could be held valid?

Mr. R.S. Athwal, learned counsel appearing on behalf of respondents submits that findings rendered by the lower Appellate Court are based upon the appreciation of the oral and documentary evidence. The defendants have failed to prove the title in the aforementioned property and were under the mis-conception that as per findings rendered by this Court in Regular Second Appeal No.128 of 1979, his father, Swaran Singh, acquired the right, whereas such finding were against them. The demarcation report clinched the controversy in dispute. It has been found that appellant-defendants had encroached on the land aforementioned. Jamabandi Ex.P5 also shows that respondent-plaintiffs are owner of land measuring 31 marlas in khasra number 5740 which was purchased from the vendor and even mutations No.18003 and 18004 were entered. The aforementioned mutation was in respect of land measuring 16 marlas 13 marlas. In the previous proceedings, findings came against the father of the appellant-defendant, therefore, the title mentioned in the property has not been proved thus urges this Court that no substantial question of law arises for determination by this Court.

I have heard learned counsel for the parties and appraised the paper book and also gone through the demarcation report dated 18.07.2001.

On going through the demarcation report, it is evident that the

demarcation has been done by the Naib Tehsildar, Jalandhar endorsed by Tehsildar at the back of the appellant-defendant. The trial Court found that demarcation has not been conducted as per the instruction issued by the Financial Commissioner, much less, as per the High Court Rules and Orders. It is a cardinal principle of law in order to claim possession vis-a-vis the illegal encroachment, the plaintiff has to place on record unclinching evidence for identifying the property alleged to be in possession of the adverse party.

In my view, the plaintiffs failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act. The lower Appellate Court has assigned no reasons, much less, cogent reasons in believing the demarcation report. For the sake of brevity, operative part of the finding rendered by the lower Appellate Court vis-a-vis the demarcation report, reads thus:-

“The trial Court has wrongly discarded the demarcation report Ex.P8 on the record and the site plan of the encroached area Ex.P9 as proved on record by PW3 Rajinder Singh, Patwari and PW4 Bhagat Ram, Retired Naib Tehsildar, Jalandhar, who conducted it. The demarcation is found according to rules. The demarcation report as proved by PW4 Bhagat Ram, Retired Naib Tehsildar, Jalandhar, certified copy of which is Ex.P8 and certified copy of encroached area Ex.P9 have been wrongly discarded by the trial Court from the purview of legal evidence.”

Keeping in view the aforementioned facts, I am of the view that plaintiffs have failed to establish the identity of the property, much less,

alleged possession of land measuring 9 marlas 69 square feet.

In view of the above-mentioned, judgment and decree of the lower Appellate Court is not sustainable and hereby set aside and that of the trial Court is restored.

Accordingly, suit is ordered to be dismissed. Substantial question of law as noticed above are answered in favour of appellant-defendants and against respondents-plaintiffs.

Appeal stands allowed.

01.03.2016

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**(AMIT RAWAL)
JUDGE**