

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

RSA No.82 of 2012 (O&M)
Date of decision : 12.05.2016

Ram Phal and others

...Appellants

Versus

Sunder Singh and others

...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: Mr. Rajesh Hooda, Advocate for the appellants.

Mr. Ajay Bishnoi, Advocate for respondent Nos.1 to 13.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the judgment and decree of the lower Appellate Court, whereby suit of the appellants-plaintiffs has been dismissed.

Mr. Rajesh Hooda, learned counsel appearing on behalf of appellants submits that suit for possession is for 15 marlas of land as mentioned in the head note of the plaint. Four Local Commissioner reports have come out and in all the reports one thing which is very much clear is that the encroachment of defendants/respondents has been reflected, though two reports have been set aside out of which was one report was submitted on 03.12.2004 and another is mere a photocopy of Ex.P4 to Ex.P6 and even Local Commissioner has not been examined. The third report Ex.PW7/A, which was in shape of demarcation report dated 24.8.1992. This report was considered to be the most genuine one. The final and last report dated 05.11.2005 which was

not exhibited but same has been considered because of the fact that both parties admitted the report. On the basis of the aforementioned reports, the trial Court decreed the suit but the lower Appellate Court reversed the findings by relying upon the report of 1992, wherein 8 marlas of land has been shown to be encroached by Deepa who is not party of the suit and only 7 marlas is encroached by defendants. He further submits that lower Appellate Court could have modified the relief, which is permissible in law. He further submits that lower Appellate Court has misread and misdirected in reading site plan Ex.D1 by showing the khasra Nos.764, 765 and 769 that there is street thus urges this Court for framing following substantial question of law:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity?
2. Whether the lower Appellate Court has misdirected and misread the documentary evidence Ex.D1?
3. Whether the lower Appellate Court could have modified the relief while decreeing the suit?

Mr. Ajay Bishnoi, learned counsel appearing on behalf of respondent Nos.1 to 13 submits that suit was instituted in 1998 and the report is of 1992 i.e. prior to filing of the suit and, therefore, while relying upon aforementioned reports, lower Appellate Court dismissed the suit because plaintiff did not give the correct particulars of the property and for want of giving the correct description, suit had rightly been dismissed and thus urges this Court for affirming of the findings rendered by the lower Appellate Court and 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 of the view that once the report of 1992 is to be relied upon,

the Lower Appellate Court ought to have decreed the suit in respect of encroachment of land measuring 7 marlas on behalf of defendants instead of setting aside the report, in essence, lower Appellate Court erred in reversing the judgment rendered by the trial Court and modified the judgment, for, other two reports qua encroachment was not at the behest of the defendants showing 10 marlas and 15 marlas which has not been looked into by both the Courts below.

There is another aspect of the matter, during the course of hearing, this court had occasion to examine Ex.D1, which shows street as 7 feet between khasra Nos.764, 765 and 769, therefore, there is gross misreading of the documentary evidence, which itself is sufficient ground for raising substantial question of law as noticed above.

In view of aforementioned facts and circumstances, I am of the view that judgment and decree of the lower Appellate Court is liable to be set aside and that of the trial Court is liable to be restored and modified to the extent of 7 marlas as per the description given in the report of 1992 i.e. Ex.PW7/A.

Question of law as noticed above are answered in favour of appellant-plaintiffs and against the respondents-defendants. Appeal resultantly is partly allowed.

Decree-sheet is ordered to be prepared in terms of the aforementioned findings.

12.05.2016

pawan

**(AMIT RAWAL)
JUDGE**