

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

RSA No.986 of 2012 (O&M)

Date of decision:06.09.2016

Charan Singh

... Appellant

Vs.

Baljinder Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Rangi, Advocate
for the appellant.

Mr. Vijay Sharma, Advocate
for respondent No.1.

AMIT RAWAL J.

C.M.No.9468-C-2015

The application is allowed, subject to all just exceptions.

Documents, Annexures R-1 and R-2 are taken on record.

RSA No.986 of 2012 (O&M)

Appellant-defendant No.1 is aggrieved of the judgments and decrees rendered by the Courts below, whereby the plaintiff is held entitled to seek possession of the land as detailed in the head note of the plaint.

Mr. S.S.Rangi, learned counsel appearing on behalf of appellant/defendant No.1 submits that the suit aforementioned was filed on 16.08.2002 preceded by a demarcation report dated 07.05.2002. The demarcation report is not in consonance with the High Court Rules and Orders as the points for measuring the area had not been fixed and thus, the Courts below have committed illegality and perversity.

The case set out by respondent No.1/plaintiff qua alleged

encroachment has not been proved in accordance with law. In fact, the case of respondent No.1/plaintiff was that she was joint owner and was in possession of the suit property bearing khasra bearing nos.52 and 57 and the defendants, who were in possession of the land in dispute, erroneously encroached upon the land of the plaintiff as way back in the year 2001. In fact, as per the orders of the Assistant Collector II Grade, Nabha, Field Kanungo Halqa Bhadson, the demarcation aforementioned was conducted and it was found that the defendants have taken illegal possession of land measuring 0-2B out of khasra nos.52 (6-8) and 0-16B out of khasra no.57 (9-11). The demarcation was not done by giving prior intimation to the parties. In fact, whole proceedings relating to the demarcation were conducted at the back of the appellant. The presence sheet, Ex.P6 does not show signature of appellant-Charan Singh. It is a concocted and made up story. The plaintiff has not stepped into witness box as the suit was filed through attorney, thus, prevented from raising certain questions in the cross examination. Even if the demarcation report is taken on record, it suffers from procedural infirmity as does not describe the details of khasra numbers and was not in accordance with the mandatory instruction issued by the Financial Commissioner. A perusal of the report reveals that it carried the signatures of Patwari and Kanungo and thus, urges this Court for setting aside the judgment and decree of the Courts below.

Per contra, Mr. Vijay Sharma, learned counsel appearing on behalf of respondent No.1 submits that vide civil miscellaneous application bearing No.9468-C-2015, (Annexures R-1 and R-2) warrant of possession were issued and possession has been taken as there was no interim stay

granted by this Court. He further submits that the Appellate Court being the last Court of fact and law, examined everything on record and found that before conducting the demarcation, demarcator had given notice to both the parties and attested copy of the notice has been proved on record. The concurrent findings of facts and law cannot be interfered with until and unless, there is gross illegality and perversity and thus, prays for dismissal of the present Regular Second Appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that submission of Mr. Rangi is not able to cut an ice, for the reason that demarcation report reveals that advance notice had been given to both the parties and attested copy of the same has been proved on record as Ex.P5. Even attendance sheet, Ex.P6 reveals the presence of persons present at the time of demarcation. PW5 – Darshan Singh, attorney of the plaintiff - Baljinder Kaur stepped into the witness box and proved the Power of Attorney Ex.P7. Appellant, on perusal of report, aforementioned, refused to sign.

It is not a case where certain acts done by the plaintiff were required to be ascertained in the cross examination and thus, defendants cannot be said to have been prevented and can take the aid of ratio decidendi culled out by the Hon'ble Supreme Court in **Man Kaur (dead) by LRs vs. Hartar Singh Sangha 2010 (10) SCC 512**. It was a simpliciter suit for possession based upon the demarcation report. Even otherwise, the attorney was none else but the husband of the plaintiff. Such power is permissible. On the contrary, it has been proved on record that defendants had encroached upon the land described above out of khasra nos.52 and 57.

Even no objection has been filed to the demarcation report. There is no force in submission of Mr. Rangi that the report was not in accordance with the High Court Rules and Orders. In fact, PW3 – Manohar Lal Kanungo Halqa Bhadson deposed that application for demarcation was moved by plaintiff - Baljinder Kaur daughter of Gurmail Singh, which was marked to him by Tehsildar and copy of the same has been proved on record as Ex.P2. He visited the spot and demarcated the land and prepared the report as Ex.P3 and as well as Naksha Ex.P4. It has also been proved on record that defendant No.2, was also present at the time of demarcation, has not filed the appeal.

It is a matter of record that only defendant No.1 filed the appeal. The report also reveals that Kanungo measured the land with measurement tape. In my view, the demarcation report is in accordance with the procedure prescribed in the instructions referred above and as well as High Court Rules and Orders.

In view of the aforementioned observations, no ground is made out for interference in the concurrent findings which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

September 06, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No