

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 1402 of 2013
Date of decision: 7.1.2016

Satbir Singh

.....Appellant

Versus

M.D.Hafed and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.R.A.Sheoran, Advocate,
for the appellant.

Mr.Amit Kumar, Advocate
for respondent Nos. 1 to 5.

- 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?*

Raj Mohan Singh, J.

1. Plaintiff-appellant No.3 has filed this appeal against the judgment and decree dated 21.12.2012 passed by District Judge Bhiwani vide which appeal against judgment and decree dated 4.12.2010 passed by the trial Court has been accepted at the instance of the defendants.

2. Plaintiffs filed a suit for ejectment of the defendants from the land measuring 293 sq.yard bearing killa No.104 rectangle Nos.12, 13 and 14 of Khewat No.84/78, Khatoni No.

101, as per jamabandi for the year 2000-01, situated in village

Ghasola in which defendants have constructed their warehouses. Plaintiffs further alleged that defendants have acquired panchayat land measuring 8 acres after paying compensation to the Gram Panchayat, which is situated adjacent to the land of the plaintiffs. Defendants never issued any notification about acquisition of the land of the plaintiffs. Plaintiffs got conducted demarcation from Local Commissioner Partap Singh, retired A.C.O. appointed by Assistant Collector, IInd grade Dadri and in view of his report, it came to the knowledge of the plaintiffs that the defendants have illegally encroached upon the area measuring 293 sq.yards. After serving notice under Section 80 CPC, the suit came to be filed.

3. On notice, defendants contested the claim of the plaintiffs on the ground that the defendants have acquired the suit land for construction of warehouse of Hafed after purchasing the same vide sale deed dated 17.9.2002 for a sale consideration of ₹ 12 lacs against total land measuring 8 acres. Mutation No. 1248 has already been sanctioned in favour of the State. Defendants further claimed that demarcation got conducted by the plaintiffs is illegal and is wrong as per factual situation of the site. Defendants have constructed the boundary wall after getting the demarcation done in which plaintiffs gave their consent.

4. After filing of replication and framing of issues, both

the parties led their respective evidence in support of their case.

5. Basic controversy revolves around the demarcation reports relied upon by both the parties. Trial Court decreed the suit by relying upon report of Partap Singh, retired A.C.O., who appeared as PW-2 and proved his demarcation report dated 9.1.2005 as Ex.P-2. On the other hand, DW-1 Joginder Singh has proved the demarcation report dated 31.8.2003, which was prepared before construction of the boundary wall.

6. Against the judgment and decree dated 4.12.2010 passed by the trial Court, defendants filed appeal before the lower Appellate Court, which was allowed vide judgment and decree dated 21.12.2011 and the judgment and decree of the trial Court was set aside.

7. Partap Singh, while appearing as PW-2, stated that on the application of plaintiff Satbir, Tehsildar passed an order of demarcation of rectangle No. 104, killa Nos. 12,13,14,19/1, 19/2 and 22/1 and in pursuance thereof, he conducted the demarcation of 26 kanals 8 marlas of land vide his report dated 9.1.2005 Ex.P-2. He has admitted in his cross-examination that he did not give any notice to the officers of Hafed as well as to the Panchayat. He also admitted in his cross-examination that at the time of his demarcation, neither the officers of Hafed nor member panchayat or sarpanch were present at the spot. The witness even admitted that Halqa Patwari was also not present

at the time of demarcation done by him. The witness did not conduct the demarcation with a zarib, rather he conducted the demarcation with a tape. The witness admitted that the demarcation should have been conducted with the help of zarib, which is a lawful mode of conducting demarcation. He also pleaded ignorance about the fact that earlier demarcation was conducted or not.

8. After the aforesaid facts came on record another witness, namely, Raje Ram appeared as PW-3. Though he has supported the case of the plaintiffs but in his cross-examination, he admitted that the plaintiffs are his brothers, but they are having separate khewats. Demarcation was conducted on 13.1.2005 and he also admitted that the demarcation was conducted by retired official of the revenue department and the plaintiffs wanted the demarcation to be done by Partap Singh. When demarcation was conducted by Partap Singh, godown had already been constructed along with boundary wall. He also admitted in his cross-examination that department had also got conducted demarcation before raising the construction at the site and the witness was also present at the time of that demarcation. He also admitted that nobody raised any objection at the time of earlier demarcation. The lower Appellate Court took cognizance of the aforesaid proved facts in the light of the statements of the witnesses, wherein it came to fore that before

raising construction, demarcation was got conducted by the defendants and thereafter, demarcation report was prepared on 31.8.2003, Ex.D-1. After that demarcation, construction of godown and boundary wall was done and no objection was raised by the plaintiffs or any other person on the spot.

9. PW-1 Rajpal and PW-3 Raje Ram were also present at the time of demarcation dated 31.8.2003. It has also come on record that demarcation Ex.P-2 was got conducted by the plaintiffs after completion of construction of godown and boundary wall on 9.1.2005 from Partap Singh, retired A.C.O. (PW-2). Admittedly, no notice was sent by Partap Singh, retired A.C.O. at the time of demarcation to the defendants or the Gram Panchayat, Ghasola. Partap Singh has admitted that neither the officers of Hafed nor members of the panchayat and sarpanch of the village were present at the time of demarcation and even Halqa Patwari was also not present. Demarcation report Ex.P-2 submitted by Partap Singh is not proved to be in consonance with the standing instructions of the Financial Commissioner and High Court Rules and Orders. No pucca points were determined and demarcation was not conducted with a zarib, but the same was conducted with a tape and it was conducted in the absence of the opposite party.

10. On the other hand, demarcation got conducted by the defendants on 31.8.2003 Ex.D-1 was done in the presence of

PW-1 Rajpal and PW-3 Raje Ram. The construction was raised, but no objection was raised by the plaintiffs against demarcation report as well as against the raising of boundary wall by the defendants. Plaintiffs selected the name of Partap Singh and sought to get him appointed as Local Commissioner. Plaintiffs were interested in the demarcation of the land to be conducted by Partap Singh only and this fact has been admitted by Raje Ram, PW-3 in his cross-examination. Plaintiffs successfully got Partap Singh appointed as Local Commissioner and he did not issue any notice to the defendants. Local Commissioner Joginder Singh, while appearing as DW-2, has proved the demarcation report Ex.D-1 as well as rough site plan Ex.D-2. He has further gone on record to prove the demarcation report dated 31.8.2003 and has also disclosed the manner in which he has conducted the demarcation after determining three pucca points in the presence of the co-sharers including PW-1 Rajpal and PW-3 Raje Ram.

11. Having considered the controversy, I find that the assessment made by lower Appellate Court, on the basis of evidence on record, is lawful appreciation of evidence and appears to be more plausible if read in conjunction with the evidence on record. The entire controversy is in respect of validity of two demarcation reports. As per PW-1 Partap Singh himself, he did not issue any notice to the officers of Hafed as

well as to the Gram Panchayat, whereas, the demarcation conducted by Joginder Singh DW-1, appears to be lawful as PW-1 and PW-3 were duly present at the time of demarcation and they did not raise any objection against the demarcation as well as construction of warehouse and boundary wall on the spot. The civil cases are to be decided on the basis of preponderance of evidence. The evidence led by the defendants has gone un-rebutted, rather it has been admitted by the witnesses of the plaintiffs.

12. Having considered the issue, this Court finds that the questions of law, as formulated by the appellant in the grounds of appeal, have to be answered against the appellant inasmuch as that the judgment passed by the lower Appellate Court is on account of correct appreciation of evidence and the judgment and decree passed by the trial Court has been lawfully reversed. Admitted proposition on record is that demarcation Ex.D-1 and rough site plan Ex.D-2 have been lawfully prepared by the Local Commissioner in the presence of PW-1 and PW-3. No objection was raised by the side of the plaintiffs at any point of time at the time of construction of warehouse as well as of boundary wall and no law point worth consideration is involved as the demarcation done by Joginder Singh DW-2 is proved to be fully in consonance with the instructions of the Financial Commissioner as well as High Courts Rules and orders on this

issue. Questions as formulated do not arise as these are not the questions of law much less substantial questions of law. On the basis of evidence on record, this Court does not want to interfere in the judgment and decree passed by the lower Appellate Court.

13. Accordingly, this appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

January 07, 2016
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