

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

**RSA No.2633 of 2016 (O&M)
Date of decision:21.10.2016**

Ramesh Chand and another ... Appellants

Vs.

Kanwar Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Atul Yadav, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, the suit for possession has been decreed by both the Courts below.

Mr. Atul Yadav, learned counsel appearing on behalf of the appellant-defendants submits that earlier the suit was dismissed and the matter was listed before the Lower Appellate Court for demarcation of the land in question. Thereafter, the trial Court on the basis of the demarcation report of Kanungo, decreed the suit and appeal filed against thereto, has been dismissed, whereas, the Court below ought not to have raised the objection for demarcation of the property at the spot, thus, there is gross illegality and perversity in conducting the demarcation. During the pendency of the appeal before the Lower Appellate Court, the respondent-plaintiff moved an application to the Tehsildar for appointment of the Kanungo for demarcation of the land and the same was done. The

demarcation report was prepared on 21.12.2015 but the Lower Appellate Court dismissed the appeal on 02.01.2016 and as per the demarcation report, the land of the appellant was intact.

I have heard learned counsel for the appellant-defendants and appraised the judgments and decrees of the Courts below and of the view that the aforementioned argument is not sustainable in the eyes of law as nothing prevented the appellants to seek review of the order, much less, place on record the same by way of documentary evidence. Once the demarcation had been done in the presence of the appellants and the objections have been dismissed, nothing prevented the appellants to avail the remedy as per the provisions of Order 43 Rule 1A CPC. I am of the view that the Court below has rightly decreed the suit as the defendants had been found in possession of excess land owned by them and in fact was owned by the respondent-plaintiffs.

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 21, 2016

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No