

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

RSA No.4643 of 2016 (O&M)

Date of Decision.08.09.2016

Kamla Devi (since deceased) through LR

.....Appellant

Vs

Ram Kishan and others

.....Respondents

Present: Mr. Shakti Singh, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.12032-C of 2016

For the reasons stated in the application, delay of 15 days in
filing the appeal is condoned.

Application is allowed.

C.M. No.12033-C of 2016

For the reasons stated in the application, permission for making
good the deficiency of court fee is granted.

Application is allowed.

C.M. No.12035-C of 2016

The application for impleading the legal representatives of
deceased-Kamla Devi is allowed subject to all just exceptions and the legal
representative is ordered to be brought on record.

RSA No.4643 of 2016 (O&M)

The appellant-defendant is aggrieved of the decretal of the suit
for possession and permanent injunction.

Mr. Shakti Singh, learned counsel for the appellant-defendant

karams as per the report of the local commissioner i.e. Halqa Girdawar dated 14.11.2007. Though the suit was filed on 08.04.2008, the Courts below have not looked into the report of demarcation dated 25.11.1996 as it reveals that there was no encroachment. The witnesses of the plaintiffs were not coherent and consistent. There are material contradictions with regard to demarcation, having been done in accordance with law or not. This itself is sufficient striking feature for rejecting the claim, but the Courts below committed illegality and perversity in not appreciating the aforementioned facts, thus, urges this Court for setting aside of the judgments and decrees under challenge by allowing the second appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force in the submission of learned counsel for the appellant, for, the demarcation report of the year 1996 cannot be looked into. It is of almost 10 years back to the date of filing of the suit. During the interregnum, it cannot be pleaded that the appellant had not encroached upon the land. As per the averments made in the suit, cause of action arose only prior to the filing of the suit, which resulted in making an application to the Tehsildar for getting the property demarcated. In my view, the plaintiffs, prima facie, have done sufficient work for establishing encroachment done by the defendant by filing an application for demarcation prior to the filing of the suit. The appellant-defendant had refused to sign the demarcation report which was done in her presence. On the other hand, the appellant-defendant placed reliance upon the report of the year 1996 which had become obsolete, instead of that she must seek for re-demarcation. Having failed to do so, there is no scope for arriving at a different conclusion than the one arrived at in the report of the

local commission, *ibid*.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of oral as well as documentary evidence, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 08, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No