

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

RSA No.5712 of 2015 (O&M)

Date of decision : 08.08.2016

Sewa Ram and another

...Appellants

Versus

Ram Dass

...Respondent

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: Ms. Sharmila Sharma, Advocate for the appellants.

Mr. Arvind Singh, Advocate for the Caveator/respondent.

AMIT RAWAL, J. (Oral)

The appellants-defendants are aggrieved of the judgment and decree rendered by both the Courts below, whereby they have been directed to hand over the vacant possession of the area being part of khasra No.309.

Ms. Sharmila Sharma, learned counsel appearing on behalf of appellants-defendants submits that plaintiff in order to claim the aforementioned relief has to prove two things i.e. title and alleged encroachment. Averments in the suit reveals that defendants had allegedly raised construction in the year 2009 and by accrual of cause of action instituted suit on 01.06.2010 whereas in the statement of PW2 Kanungo

who was appointed as Local Commissioner, it has surfaced that both the parties have raised the house long time back. The defendants have not pleaded adverse possession, therefore, could not take such defence. The Local Commissioner Report is not according to the High Court Rules and Regulations so could have been taken into consideration. The plaintiff himself admitted that he raised construction in 1993 and houses are in line, therefore, there was no question of alleged encroachment. Though, khasra No.309 allegedly belonging to respondent is measuring 9 marlas and alleged encroachment is part of it, thus, the plaintiff is miserably failed to discharge the onus as per provision of Section 101 of the Indian Evidence Act.

Mr. Arvind Singh, learned counsel appearing on behalf of respondent submits that concurrent findings of fact cannot be interfered with. If at all the appellants-defendants were aggrieved of the report of the Kanungo, they could take the assistance of the expert. In the absence of plea of adverse possession, they could not take advantage of the houses having raised long time back and urges this Court for affirmation of the concurrent findings of fact as judgment and decree do not suffers from illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Ms. Sharmila, Advocate for the appellants. This Court at one point of time thought of settlement of the matter between the parties through mediation process but the respondent-plaintiff suffered statement that he did not want to settle the matter despite the fact that Ms. Sharmila Sharma, at bar offered to compensate the plaintiff in terms of money.

On merits, I am of the view that respondent-plaintiff has been able to prove the case as report of Local Commissioner reveals that appellants-defendants have occupied part and parcel of certain Government land and only small portion of khasra No.309 belonging to the plaintiff has been occupied. It is in this backdrop of the matter that the trial court only confined the decree vis-a-vis khasra No.309. No person can encroach upon over either private or public land. If at all the defendants were aggrieved of the report of Local Commissioner, they could have filed the objection or could have take the assistance of the expert to dispel the same or cross examine. Having failed to do so, they cannot take the plea of adverse possession in the absence of the pleadings.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree under challenge, much less, no substantial questions of law arises for determination.

No ground for interference is made out.

Dismissed.

08.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- **Yes**

Whether reportable:- **Yes/No**