

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

RSA No.1721 of 2002 (O&M)

Date of decision : 18.08.2017

Raj Pal and another

...Appellants

Versus

Manohar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikas Bahl, Sr. Advocate with
Ms. Monica Bahl, Advocate and
Ms. Japneet Kaur, Advocate for the appellants.

Mr. Harsh Aggarwal, Advocate for the respondents

ANIL KSHETARPAL, J.

The defendant Nos.3 and 4 have filed the present appeal against the concurrent findings of fact arrived at by the Courts.

The plaintiffs had filed a suit for permanent injunction restraining the defendants from digging foundation for carrying construction or encroachment in the area owned by the plaintiffs shown by letters EXGY attached with the plaint comprised in Rectangle No.65. It was further prayed that if the defendants succeed in encroaching upon or raising any construction on the land of the plaintiffs during the pendency of the suit then the decree for mandatory injunction directing removal of such encroachment be also passed.

The suit was filed against four defendants. The defendant No.1

is father and defendant Nos.2, 3 and 4 are sons of defendant No.1.

The defendants took a stand that they have not encroached upon any land of the plaintiffs and they have already raised construction in Rectangle No.66.

Since, the only dispute was as to whether defendants have encroached upon any area of Rectangle No.65 owned by the plaintiffs or not. The trial Court appointed the revenue officials to visit the spot and carry out the demarcation. The revenue officials carried out the demarcation in the presence of both the parties and Sarpanch of the Gram Panchayat and other respectables. The Local Commissioner did find that the defendants have encroached upon approximately 10 marlas of land of Rectangle No.65.

During the pendency of the suit, one of the defendant i.e. Hari Singh-defendant No.2 while accepting the inadvertent encroachment settled the dispute with the plaintiffs on payment of ₹15,000/-. The aforesaid settlement between the parties is Ex.C1 on the file. The learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiffs.

The first appeal preferred by the appellants was also dismissed. The learned First Appellate Court re-appreciated the evidence available on the file and held that it is proved on the file that the defendants had encroached upon the land to the extent of 10 marlas which belonged to the plaintiffs comprised in Rectangle No.65.

Learned counsel for the appellants has submitted that Local Commissioner did not fix three pucca points for starting the demarcation. He has further submitted that length of Zarib (measurement chain) had not

been verified. He has further submitted that while carrying out the demarcation, 4 karam has been added twice. Learned counsel for the appellants has further submitted that merely because Hari Ram had entered into settlement that itself cannot be made basis of returning a finding that the remaining defendants had also encroached upon the land of the plaintiffs.

While admitting the appeal for regular hearing, this Court on February 5, 2009 framed following substantial questions of law:-

“i) Whether the report of the Local Commissioner could in law be taken into consideration when he has not fixed three pucca points before carrying out the demarcation as per the standing instructions of the Financial Commissioner?

ii) Whether the compromise allegedly effected between Hari Singh defendant can be relied upon for passing a decree against the appellants?

Admitted.”

I have heard learned counsel for the parties at length and with their able assistance gone through the records as well as judgments passed by the Courts below.

A careful reading of the report of the Local Commissioner which is Ex.PW2 on the record shows that the Local Commissioner while carrying out the demarcation did fix three pucca points and thereafter carried out the demarcation. The report submitted by the Kanungo who was appointed is in detail and learned counsel for the parties after reading the report have felt satisfied that the Local Commissioner did fix three pucca points while carrying out the demarcation.

Learned counsel for the appellants has submitted that length of

Zarib (measurement chain) had not been verified. A reading of the report would show that length of Zarib was checked with measuring tape and its length found to be correct i.e. 55 feet.

Learned counsel for the appellants has further submitted that the Local Commissioner while carrying out the demarcation wrongly added the area of 4 karam twice over. I alongwith the help of learned counsels gone through the report but I find no substance in the argument of learned counsel for the appellants.

The demarcation had been carried out in the presence of the parties and the Sarpanch and other respectables of the village. A reading of the report does not show that 4 karam added twice. Further learned counsel has submitted that compromise arrived at by Hari Singh cannot be relied upon for passing the decree against the appellant. No doubt, the compromise arrived at between Hari Singh defendant and the plaintiffs cannot be used against the appellants.

I have read the judgments passed by the Courts below. Both the Courts have independently arrived at a conclusion that defendants have encroached upon the land of the plaintiffs comprised in Rectangle No.65. In this case, demarcation was carried out by the revenue officials in the presence of the parties as well as Sarpanch and other respectables and it was found that the defendants-appellants have encroached upon the land of the plaintiffs.

In view of the discussion made above, the questions of law framed are answered against the appellants. I find no reasons to interfere with the concurrent findings of fact arrived at by the Courts.

Regular Second Appeal is dismissed.

Any pending application is disposed of, in terms of the abovesaid judgment.

18.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No