

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

**RSA No.2018 of 2011 (O&M)
Date of Order:25.07.2017**

Delhi Development Authority

..Appellant

Versus

M/s R.C.Sood & Co. Pvt. Ltd. and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulvir Narwal, Advocate,
for the appellant.

Mr. Sanjay Vij, Advocate,
for respondents no.1 and 2.

ANIL KSHETARPAL, J (Oral)

Defendant-Delhi Development Authority, has filed the present appeal against concurrent findings of fact arrived at by the Courts below.

The respondents-plaintiffs had filed a suit for declaration with a consequential relief of permanent injunction. It was claimed by the plaintiffs that they have purchased 344 kanals and 17 marlas of land situated in the revenue estate of village Lakkerpur, from the year 1961 to 1964 and they have been in actual physical possession of the suit land. Plaintiffs further claimed that after getting the lay out plan sanctioned from Director Town and Country Planning, Haryana, in 1971, they started developing the area and constructed a boundary wall on all sides of the colony. It was further pleaded that northern-eastern wall of the plaintiffs adjoins the land of the defendant and defendant illegally demolished the boundary wall constructed by the plaintiffs.

Defendant appeared and filed written statement asserting that in fact the boundary wall was constructed in the land owned by the defendant, therefore, the wall was demolished. Defendant further claimed that a demarcation was carried out on 28.06.1992. However, representatives of the plaintiffs refused to sign the report.

During the pendency of the suit, Court appointed a Local Commissioner. The Local commissioner demarcated the area in the presence of representatives of both the parties including revenue officials of both the States. After carrying out demarcation, it was found that the claim made by the plaintiffs is correct.

Appellant filed objections to the report submitted by the Local Commissioner.

The learned trial court after appreciating the evidence available on the file, decreed the suit filed by the plaintiffs, after relying upon detailed report of Naib Tehsildar, who had carried out the demarcation with the help of kanungo and local patwari, in the presence of revenue officials of defendant-Delhi Development Authority.

Appeal was filed by the Delhi Development Authority before the first appellate Court. The first appeal was also ordered to be dismissed after re-appreciating the evidence available on the record. First appellate Court although committed a small error in noticing that the appellant did not file any objections, whereas in fact objections were filed. However, the conclusion drawn by the learned first appellate court after considering the report of demarcation, carried out by the revenue officials in the presence of officials of the appellant was relied upon. Learned first appellate court dismissed the appeal filed by the appellant.

The appellant-Delhi Development Authority has filed the present appeal.

Counsel representing the appellant has submitted three arguments:- (i) the demarcation carried out by the authorities was not from the pacca points rather from the wall of the constructed houses, (ii) the appellant had filed objections and first appellate court committed error in observing that no objections were filed' and (iii) the suit filed by defendant no.2 was not maintainable as defendant no.2 is a private limited company and no resolution has been produced on the file.

I have heard counsel for the parties and have examined the record.

A reading of the demarcation report, Ex.P18, shows that the demarcation was carried out by the revenue authorities in the presence of revenue officials of both the States. The demarcation was carried out after carrying out demarcation from different angles. The walls of constructed houses were found to be correctly placed as per the demarcation. At the time of demarcation all the persons present including the officials accepted the correctness of the report and did not object to the procedure adopted. Of course, later on appellant had filed objections. Learned first appellate court dealt with objections and found no force in the same.

In these circumstances, it is not possible for this Court to again order demarcation, once the demarcation has been carried out to the entire satisfaction of all the parties present. It is not a case of the appellant that their officials were not present or they raised any objections at the time of carrying out demarcation.

As far as second submission of counsel for the appellant that

objections were filed. This is the small error in the judgment of the first appellate court. However, that would not improve the case of the appellant. The objections to the report of the local commissioner were filed subsequently by the appellant and after considering all the objections, learned trial court accepted the report of demarcation, Ex.P18, to be correct, therefore, merely because the first appellate court has noticed a wrong small fact that would not vitiate the judgment passed by the first appellate court.

Still further learned counsel for the appellant has submitted that suit on behalf of plaintiff no.2, which is a private limited company is not maintainable because no resolution has been produced on the file proving authorization to file the suit.

I have carefully examined the record. Factually learned counsel for the appellant is correct. However, resolution in favour of plaintiff no.1 has been proved. Plaintiffs no.1 and 2 are companies under one umbrella. This Court would not take a hyper technical view and dismissed the suit filed by the appellant once both the parties have got adjudication of their dispute after undergoing full-fledged trial. Non-filing of resolution is a mere irregularity which can be rectified at any stage.

Taking into consideration, the concurrent judgments passed by the Courts below and the report Ex.P18, carrying out demarcation of the land to the satisfaction of every one, I do not find any ground to interfere with the findings of fact either by the courts below, hence the appeal is ordered to be dismissed.

July 25, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No