

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

RSA No.3881 of 2011 (O&M)

Date of decision : 08.11.2017

Karan Singh

...Appellant

Versus

Ram Phal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jitender Nara, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.11145-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 204 days in filing the appeal is condoned.

Application is allowed.

CM No.11146-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 15 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The defendant-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff had filed a suit for possession and permanent injunction with the assertions that the plaintiff and defendant are having

adjoining land and defendant has illegally encroached upon certain portion of the land owned by the plaintiff. The plaintiff also pleaded that he had got the land demarcated from one Sh. Ramesh Girdawar, a Revenue Official who has reported vide his report dated 08.06.2003 that the defendant has encroached upon 8-9 marlas of land alongwith Sheesham trees.

The defendant contested the suit and pleaded that there was no encroachment.

Learned trial Court as well as learned First Appellate Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that before carrying out the demarcation, no notice was given to the defendant-appellant. Therefore, the report could not be relied upon. He has further submitted that the plaintiff was only one of the co-owner in the entire khata and, therefore, without impleading the remaining co-owners, the suit could not be filed.

I have considered the submissions of the learned counsel.

As regards the notice, it may be sufficient to mention here that the plaintiff before filing the suit had got carried out the demarcation of the land. The plaintiff came to the Court with the specific assertions in the plaint that on the demarcation carried out by Ramesh Girdawar, encroachment at the hands of the defendant has been found. The defendant

did not take any step or make a request to the Court to get the land re-demarcated. Now at this stage, the defendant cannot be permitted to raise an argument that no notice was given to the defendant. If the defendant had any reasonable apprehension that the demarcation has not been carried out properly, he should have either got the land demarcated or requested the trial Court to appoint Local Commissioner in terms of Order 26 of the Code of Civil Procedure.

Second argument of the learned counsel is that the plaintiff is one of the co-owner and since remaining co-owners have not been impleaded as party, therefore, the suit is not maintainable.

I have specifically asked the learned counsel for the appellant that Is the defendant in the aforesaid khata, co-owner with the plaintiff? The answer is in negative. One of the co-owner is entitled to complain about the encroachment if the defendant who has encroached upon is not co-owner in the aforesaid khewat/khata.

For the reasons recorded above, this Court is unable to find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

08.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No