

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

**RSA No.2193 of 2016 (O&M)
Date of Decision: 24.07.2017**

Khayali Ram

... Appellant

Versus

Amar Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ashish Yadav, Advocate,
for the Appellant.

ANIL KSHETARPAL, J.

Defendant is in Regular Second Appeal against the concurrent judgement passed by the Courts below.

The plaintiff filed a suit seeking permanent injunction restraining the defendant from creating any obstruction in the plaintiff's peaceful enjoyment over the common wall and for mandatory injunction for issuance of direction to the defendant to allow him to use the common wall for installing a tin shed.

Defendant appeared and took the stand that wall in dispute is part of his own land and it is not the common wall between the parties.

Learned trial Court appreciating the evidence available on the file and after relying upon the report of the Local Commissioner- Shri Dalbir Singh Duggal, Field Kanoongo, who had carried out demarcation, decreed the suit filed by the plaintiff with a finding that the wall between the parties is common. It was further found that the demarcation was carried

out with the consent of parties and the parties did not raise any objection at the time of demarcation. Learned trial Court further recorded that a reading of the report reveals that the person present on the spot at the time of demarcation, themselves admitted that the permanent construction is correctly placed. It is further pointed out that the Local Commissioner verified the location and dimensions of the construction with the revenue record. With these findings, the trial Court decreed the suit filed by the plaintiff.

The first appeal filed by the defendant has also been dismissed. Learned first Appellate Court has reappreciated the evidence and once again examined the report of the Local Commissioner. It has been found that the defendant can use only 7 inches of the disputed wall towards his side out of total 14 inches.

I have heard the learned counsel for the appellant at length.

Learned counsel for the appellant has read out to me the cross-examination of the Local Commissioner, who appeared as DW2. Learned counsel for the appellant has tried to stress that the report of the Local Commissioner is not correct as the Local Commissioner did not first carry out the demarcation from the pillar installed at the time of consolidation, therefore, the report is a waste paper and cannot be relied upon in evidence.

Learned counsel has further submitted that the Local Commissioner did not even examine the documents of ownership of both the parties. Unless and until documents of ownership are examined by the Local Commissioner, he could not have given any report.

As regards the first submission, it is the admitted position on record that the property in dispute is surrounded by construction all around. The Local Commissioner has clearly recorded in his report that permanent constructions in the surroundings were admitted to be correct and the parties agreed that the demarcation can be started from the permanent construction. The Local Commissioner further verified the location and dimensions of the construction with the revenue record.

Defendant did not raise any objection to the report of the Local Commissioner at the time when demarcation was underway. The Local Commissioner was examined by the defendant.

Therefore, the Courts below have rightly concluded that there is no defect in the demarcation carried out by the Local Commissioner.

Second contention of the learned counsel for the appellant that the report of the Local Commissioner cannot be relied upon as the Local Commissioner has not examined the documents of ownership of the parties. The Local Commissioner was deputed to carry out demarcation. The Local Commissioner was not deputed to decide or submit a report on the ownership of the parties. In fact, ownership of the parties is not in dispute. The only dispute involved in the present case is whether the wall constructed between the two houses of plaintiff and defendant is common/joint or exclusive of defendant. Only demarcation of the property could throw light on the actual position. The trial Court appointed the Local Commissioner. The Local Commissioner gave a report against the defendant.

In view of the discussion made above, there is no scope for interference in the present Regular Second Appeal, particularly when both the Courts have concurrently found that the wall between two houses is common/joint.

Counsel for the appellant has not been able to point out any substantial questions of law involved in the present appeal. Learned counsel has further not been able to point out any ground, which may fall within the parameters of Section 41 of the Punjab Courts Act, 1918.

In view of the above, the present appeal is ordered to be dismissed.

24.07.2017
sk

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No