

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

RSA No.1117 of 2017 (O&M)
Date of Decision: March 15, 2017

Jai Bhagwan & Ors.

..Appellant(s)

Versus

Raj Kumar

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.P. Chahar, Advocate
for the appellants.

ANITA CHAUDHRY, J.

CM-2554-C-2017

For the reasons set out in the application, same is allowed as prayed for and delay of 25 days in filing the present appeal is condoned.

RSA No.1117 of 2017

This is the defendants' second appeal seeking reversal of the judgments passed by both the Courts below.

The plaintiff had approached the Court seeking possession of his plot which had been partially encroached by the defendants. The plaintiff was a co-sharer in plot no.210 measuring 1 Kanal 2 Marlas. The defendants denied that any encroachment had been made. The plaintiff led evidence and also produced the report of the Local Commissioner. A retired Naib Tehsildar had demarcated the property in

July, 2008 in the presence of the Lambardar who was none other but the real brother of the defendants. The ownership of plot no.210 was not in dispute. The trial Court decreed the suit and gave a specific finding that the encroached portion was shown in the demarcation report Ex.P2 and P4.

Aggrieved by the judgment an appeal was preferred by the defendants, which was dismissed. The Appellate Court had observed that if the defendants were not satisfied with the report that was relied upon by the plaintiff, they could have filed an application and got the demarcation done again. The plea that the construction had been raised over 20 years was also rejected by the trial Court. It was noted that the plea was an afterthought and it was not pleaded in the written statement.

The plaintiff before filing the suit had approached the Naib Tehsildar for appointment of Local Commissioner. The A.C. IInd Grade had appointed a retired Naib Tehsildar to demarcate the property.

I have gone through the report of the Local Commissioner and find that the Local Commissioner had complied with all the directions provided in the rules framed by the Financial Commissioner. Three Pakka points were fixed to measure the area. The presence of the persons who were present was recorded which includes the Chowkidar and Lambardar who was the real brother of the defendants. A feeble attempt was made and it was suggested that the appellants were ready to compensate the plaintiff.

I am afraid it is too late to make any offer. That effort should have been made much earlier. I find no merit in the appeal. The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

March 15, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No