

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

Sr. No.111

RSA No.1413 of 2017 (O&M)

Date of decision: 07.11.2017

Nachhattar Singh

....Appellant

versus

Sewa Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. A.K. Goel, Advocate
for the appellant.

* * * *

DEEPAK SIBAL, J. (Oral)

C.M. No.13491-C of 2017

Through the present application, in compliance of the order of this Court dated 14.03.2017, report of the Local Commissioner is sought to be placed on the record as Annexure P-1.

Allowed as prayed for.

CM stands disposed of.

Main Appeal

The respondent through a suit filed before the trial court sought possession of land measuring 10 marlas, out of which 2 marlas comprised in khasra no.12//3/1/1/0-2 and 8 marlas comprised in khasra No.12//8/1 amalgamated by the appellant in his property comprising in khasra no.12//3/2 and 12//8/2, situated in the revenue estate of village Batuha, Tehsil Dhuri, District Sangrur (for short the 'suit property'). Permanent injunction restraining the appellant from changing the nature and condition

of the suit property in any manner was also sought.

Through judgment and decree dated 20.03.2013, the trial court dismissed the respondent's suit. On appeal, through order dated 04.12.2013, the Appellate Court remanded the matter to the trial court for a fresh decision after appointing a Local Commissioner. As directed by the appellate court, the trial court appointed Field Quanungo, Dhuri, as a Local Commissioner to visit the spot after giving prior notice to the parties to the lis and to demarcate the property in dispute in accordance with law. The Field Quanungo, Dhuri visited the spot, demarcated the suit property and submitted his report to the trial court against which both the parties filed objections. The Field Quanungo, Dhuri-cum-Local Commissioner was also summoned as a court witness and cross-examined by both the above parties.

The trial court decreed the respondent's suit. The appellant preferred an appeal against such judgment and decree which was dismissed by the appellate court on 01.12.2016 giving him a cause to knock the doors of this Court through the present second appeal.

Learned counsel for the appellant contended that the trial court erred by relying upon the report of the Local Commissioner as such report had not been prepared in accordance with law, since the report was prepared without locating a pucca burji. In this regard reliance was placed on a judgment of this Court - **Haryana Wakf Board versus Asha Rani and another**, 2017(3) PLR 168. Learned counsel further submitted that even the appellate court erred while relying upon a report of M/s S.S. Engineers and Architects, who were appointed as a Local Commissioner by the appellate court itself as such report was passed on the basis of measurement conducted by a Laser Machine which was beyond the Punjab and Haryana

High Court Rules and Orders.

The afore submissions do not warrant a favourable consideration.

As per the directions contained in the remand order dated 04.12.2013 passed by the appellate court, the trial court appointed Amrik Singh, who was a Field Quanungo as a Local Commissioner to conduct fresh demaracation of the suit property. A Field Quanungo is a Government official in the Department of Revenue and therefore, in the given circumstances was an appropriate choice. He conducted the demarcation after issuing prior notice to the litigating parties. The appellant not only refused to sign on the process issued to him intimating him the date and time of demarcation, he also chose to remain absent at the time of demarcation. As per the report of the Local Commissioner, there was no Pucci Burji existing in the vicinity of the property. Therefore, with the consent of all the parties, who were present there, a Pucca Banna was selected from where the demarcation was conducted and after demarcation, as per rules, Naksha Tafawat and copy of Aks Latha of village Batuha was prepared which was submitted alongwith the report. As per the report 4 marlas out of khasra No.12//3/1/1 and 10 marlas out of khasra No.12//8/1 was less with the respondent as per his ownership. Thus, the appellant was found to have encroached upon the respondent's land beyond his share .

So far as the objection raised by learned counsel for the appellant that the demarcation done by the Field Quanungo could not have been relied upon by the trial court as no Pucci Burji was fixed is concerned, in the facts of the case in hand, the same is liable to be rejected. The report of the Field Quanungo clearly states that no Pucci Burji existed in the

vicinity of the suit property and therefore, left with no choice, with the consent of the persons present, he selected a Pucca Banna and thereafter in accordance with the rules conducted the demarcation. The appellant not only refused to acknowledge the intimation sent to him informing him the date and time of inspection, he also chose to remain absent from the spot at the time of the inspection. Thus, he cannot be allowed to raise the afore objection to the demarcation report which found him to be an encroacher upon his brother's land.

On joint request of the parties, Naib Tehsildar, Dhuri, who is a Revenue Official under the State and is higher in hierarchy than a Field Quanungo, was appointed by the appellate court to conduct a fresh demarcation with the help of latest technology by using a Laser Machine. Accordingly, the Naib Tehsildar, Dhuri, after engaging the service of M/s S.S. Engineers and Architects, Ludhiana, with the help of a Laser Machine conducted demarcation of the suit property and found that the appellant had encroached upon 17 marlas of the respondent's-land. The second demarcation by the Naib Tehsildar, Dhuri, which was conducted with the help of a Laser Machine had been got done as per the directions issued by the appellate court on the joint request of the parties. Further, the order through which these directions had been issued had been accepted by the appellant since no challenge to the same was made by him. Only because the report was adverse to the appellant's interest, he cannot be allowed to challenge the same in the present appeal.

Two separate reports by two different revenue officials of the Government have been relied upon by the trial court as also the appellate court which have concurrently found the appellant to be an encroacher upon

his brother's land. No fault in the factual contents of the above reports could be pointed by learned counsel for the appellants.

Both the trial court as also the appellate court have concurrently found that the appellant, being the respondent's real brother and the respondent not residing in the village as also for the reason that there were no clear boundaries between their respective properties, got greedy and slowly started to encroach and amalgamate his brother's property in his own.

Haryana Wakf Board's case (supra), which was cited by learned counsel for the appellant would also not support his case as in that case, the Local Commissioner never issued any notice to defendant No.2 therein and therefore, the report of the Local Commissioner with regard to demarcation was discarded. The facts in the present case are otherwise as in spite of notice having been served upon the appellant, he chose to remain absent at the time when the demarcation was done by the Local Commissioner.

No other point was urged.

In view of the above, the above concurrent findings arrived at by both the trial court and the appellate court warrant no interference and no question of law, much less a substantial question of law is found to arise in the present appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

November 07, 2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No