

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

**RSA No.3124 of 2017 (O&M)
Date of Decision: 4.9.2017**

Mahabir Singh

... Appellant

Versus

Ram Dayal (Since deceased) through his LRs

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Naveen Kundu, Advocate for the appellant

RAJIV NARAIN RAINA, J. (Oral)

1. This is plaintiff's second appeal challenging the impugned judgments and decrees of the trial court and the first appellate court whereby the suit of the plaintiff for possession over the suit property has been decreed against the plaintiff. The suit stands dismissed.
2. Non-production of the original demarcation report dated 1st October, 2007 and bringing on only its attested copy is blamed on the counsel for the plaintiff. The success of entire case depended on a demarcation report in a dispute between neighbourers. The defendant came in possession of the suit property, which is a contiguous to defendants' property by a registered sale deed bearing Vasika No.1897/1 dated 2nd June, 1999 executed in the Sub Registrar's Tehsil office. The report of the Local Commissioner has not been accepted as legal evidence on account of non-production of its maker. The plaintiff did not call the Local Commissioner as a witness to prove the

demarcation report and whether it had been carried out in accordance with law and the procedure prescribed by the Punjab and Haryana High Court Rules and Orders.

3. The lower appellate court was not wrong in observing that the defendant had a valuable right to cross-examine the Local Commissioner if brought as a witness by the plaintiff to assess the genuineness of the report. The plaintiff blames his counsel, but he must equally blame himself when in the cross-examination, he admitted that he does not know who had demarcated the suit property nor he know the time and date of the demarcation of the suit property by the Local Commissioner.

4. Learned counsel for the appellant contends that this lapse is on account of a combination of fault of the counsel for the plaintiff committed in the trial court and because of the illiteracy of the plaintiff. Neither of these two arguments can be accepted as valid attack to the proceedings. If the parties are allowed to blame their counsel due to failure in tendering advice leading to a perceived mis-trial by non-production of the original document and summoning the local commissioner as witness, then perhaps each case would have to be re-opened to help the parties to fill in the lacunae left during recording of evidence, which correction does not fall within the jurisdiction of this Court under Section 100 of the Code of Civil Procedure and Section 41 of the Punjab Courts Act, 1918.

5. There is no other reliable evidence produced on record to prove possession of the plaintiff conclusively over the suit property and therefore, this Court is constrained not to interfere in this matter

where two courts after appreciating the evidence available and duly adduced by the parties have returned concurrent findings of fact contrary to the case set up by the plaintiff in his plaint.

6. On the basis of the lack of evidence and materials on record justifying a decree in favour of the plaintiff, it is not possible for this Court to interfere with the findings of fact recorded by the courts below. The judgment and decrees of the courts below do not suffer from any illegality, irregularity or perversity; nor the same can be said to be tainted with any error apparent on the face of record so as to require interference by this Court in this second appeal. No question of law, much less a substantial one, arises for consideration in this appeal.

7. For the foregoing reasons, this appeal is held to be without substance and is dismissed. No order is required to be passed on the application for condoning the delay of 13 days beyond the period prescribed for filing a second appeal against an appellate decree.

(RAJIV NARAIN RAINA)
JUDGE

4.9.2017
MFK

Whether speaking/reasoned	Yes
Whether reportable	No