

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

RSA No.3861 of 2017 (O&M)

Date of decision : 31.08.2017

Sunder Singh and others

...Appellants

Versus

Khemi (now deceased) through his LRs and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shokeen Singh Verma, Advocate for the appellants.

ANIL KSHETARPAL, J.

CM No.9633-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 4 days in filing the appeal is condoned.

Application stands allowed.

CM No.9634-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 21 days in refiling the present appeal is condoned.

Application stands allowed.

CM No.9635-C of 2017

Application is allowed, subject to all just exceptions and legal heirs of appellant No.3 are permitted to be brought on record for the purpose of prosecuting the present appeal.

Main Case

The plaintiffs are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs had filed a suit for permanent injunction against the

defendants stating that the plaintiffs are joint owner in possession of the agricultural land mentioned in para No.1 of the plaint and a pond is in existence in khasra No.190. It is asserted that the property of the plaintiffs bearing Killa Nos.30/25/1 and 38/5/1 is situated in East and 30/24 and 38/4 is situated in West South.

It was further asserted that the defendants are wanting to raise illegal construction over the said killa numbers. The plaintiffs had pleaded that the plaintiffs had earlier also filed a suit for permanent injunction on 02.12.2009 wherein a Local Commissioner was appointed. However, the demarcation could not be carried out as Local Commissioner remained ill for quite sometime. It was pleaded that the defendants illegally dug the foundation and want to raise the construction.

The defendants contested the suit. It was submitted that the plaintiffs are allergic qua the development and construction of temple and the plaintiffs are actually interested in encroaching upon the pond and the temple in unlawful manner. It was submitted that the construction of temple is being carried over khasra No.190 and the said construction shall be used only for the religious purpose. It was further asserted that the plaintiffs are in habit of filing false applications.

During the pendency of the suit, the learned trial Court appointed a revenue official to carry out the demarcation. The Local Commissioner submitted his report which is Ex.P7 on the file. It was reported by the Local Commissioner that it is in fact the plaintiffs who have encroached upon 11 marlas of passage and land of the temple.

Learned Court after noticing that the plaintiffs had filed

objections to the report of the Local Commissioner, dismissed the suit filed by the plaintiffs.

Appeal filed by the plaintiffs was also dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellants has submitted that earlier also, demarcation was carried out on 09.08.2014 but as per that demarcation, it was found that the defendants have encroached upon certain portion of the land. He submits that the aforesaid demarcation report has not been considered by the Court.

I have considered the submission of learned counsel. However, there is no force in the same. In para No.12 of the Lower Appellate Court judgment, the Court has considered the demarcation report dated 09.08.2014. The learned Court has concluded that neither as per report Ex.P4 nor as per report Ex.P7, defendants are shown to have been encroached upon any portion of the land comprised in khasra No.190. The Court has further held that mere oral statement of the plaintiff(s) is not sufficient to prove that there is encroachment.

In view of the aforesaid discussion, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts.

Appeal is dismissed.

31.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No