

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

RSA No. 4018 of 2017 (O&M)

DATE OF DECISION : 08.12.2017

M/s Jagan Lee Tak Lamps Ltd., Kundli

.... APPELLANT

Versus

Naresh Dahiya

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Mohnish Sharma, Advocate,
 for the appellant.

* * *

AVNEESH JHINGAN, J.

This regular second appeal has been filed at the behest of the defendant being aggrieved of the suit of the plaintiff having been decreed by the concurrent decisions of the learned courts below.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiff filed a suit for demarcating boundaries and possession along with permanent injunction of the suit property, detailed in the suit.

The facts, as averred in the plaint, are that the plaintiff is owner of the land measuring 1 kanal 6 marlas situated within the revenue estate of village Kundli, Tehsil and District Sonapat. The land comprised in rectangle and killa No. 69//4/1/2/1/2/2 (0-8), 4/3/3/1 (0-16) and 26/3/2 (0-2). It was

alleged that the defendant had encroached upon killa No. 69//26/3/2 and some part of killa No. 69//4/1/2/1/2/2. It was stated that the defendant had filed a suit for permanent injunction against the father of the plaintiff on 19.02.1997. The said suit was contested and counter-claim was filed that the defendant had encroached upon 10 marlas land belonging to father of the plaintiff. The suit of the present defendant was dismissed on 14.06.2005 by the court of learned Additional Civil Judge (Sr. Division), Sonapat and the counter-claim was decreed. The appeal against the said judgment and decree was dismissed by the first appellate court on 09.12.2015. The said judgment and decree was further upheld by this court on 13.07.2006. It was alleged that the defendant encroached upon killa No. 69//26/3/2 and some part of killa No. 69//4/1/2/1/2/2, by raising a wall and installing the gate. The said encroachment was done after execution of the aforesaid judgment and decree dated 14.06.2005. It was stated that father of the plaintiff had filed demarcation report conducted by Shri K.C. Chhabra, retired Naib Tehsildar, on 14.10.1997. Later on, a local commissioner was appointed. He submitted report dated 15.11.2003, in which he stated that he had not demarcated killa No. 69//26/3/2 due to the reason that the court had not directed to demarcate the said killa number. When the defendant was not removing encroachment on the request of the plaintiff, present suit was filed.

Upon notice, the defendant filed written statement raising preliminary objections. The defendant relied upon the earlier litigation and it was stated that as per the decree of the counter-claim, the vacant

possession was handed over to the plaintiff. It was further denied that the defendant has encroached upon any property of the plaintiff. It was averred that a fresh wall was constructed by the defendant within its own area and gate was fixed on its own land. It was denied that the local commissioner earlier did not demarcate the said killa number.

The learned trial court framed the following issues :-

1. Whether the plaintiff is owner of the land mentioned and defendant has encroached portion of the land? OPP
2. If issue No.1 is proved, whether plaintiff is entitled for possession of the portion encroached by defendant on the ground mentioned in the plaint? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiff has no cause of action and no locus-standi to file the present suit? OPD
5. Whether the suit is time barred? OPD
6. Relief.

The plaintiff (Balwanti Devi since deceased) herself appeared as PW.1 and produced certified copy of the demarcation report, copy of jamabandi for the year 2004-05 and copy of the local commissioner report as Ex.P1 to Ex.P3, respectively.

The defendant, on the other hand, examined Dayanand DRK as DW.1 and Suraj Parkash, Managing Director of the defendant company appeared as DW.2. They exhibited documents, i.e. extract of minute of meeting, attested copy of plaint, certified copies of judgment and decree, order, written statement and counter-claim as Ex.D1 to Ex.D7, respectively.

The suit was decided by the learned trial court vide judgment and decree on 23.07.2013. Appeal was filed against the said judgment and decree and the learned appellate court remanded the case back to the learned trial court to decide the objections filed by the appellant against the report of local commissioner dated 22.03.2012.

It is pertinent to mention that during trial, learned counsel for both the parties raised no objection for appointing a fresh local commissioner to demarcate the suit property. Hence, the objections raised with regard to report of the earlier local commissioner were dismissed.

Learned trial court relied upon the report of the local commissioner appointed during the pendency of the suit and decided issues No.1 and 2 in favour of the plaintiff and against the defendant. Issues No.3, 4 and 5 were decided against the defendant and in favour of the plaintiff. The net result was that vide judgment and decree dated 06.02.2016, the suit was decreed and the defendant was directed to remove the encroachment made on the land measuring 87 square yards.

Aggrieved of the aforesaid judgment and decree, the defendant filed an appeal. The learned first appellate court, vide judgment and decree dated 31.05.2017, dismissed the appeal.

Hence, the present Regular Second Appeal by the defendant.

Learned counsel for the defendant has contended that the learned courts below have erred in decreeing the suit by relying upon the report of the local commissioner, as in his report he had given a note that the

present revenue record of the suit land does not tally with the record prepared during consolidation of the land, due to which area of killa number increased at the spot. No other contention was raised.

In the appeal filed by the defendant, though six questions of law have been framed, but at the time of arguments, only the above mentioned contention was raised.

It is important to note that the previous litigation and the reliance upon the reports of the local commissioner in the said litigation would be of no help in the present case. Firstly, because it has been alleged that there has been a fresh encroachment by the defendant, after the execution of the earlier decree. Secondly, a fresh local commissioner was appointed by the learned trial court after the remand from the appellate court and learned counsel for both the parties had given their no objection to the same. In such circumstances, the only issue remains for consideration was that whether there was an encroachment, as alleged by the plaintiff or not? The report of the local commissioner specifically stated that the defendant has encroached upon 87 square yards of the suit property. Report further shows that the defendant had not made any encroachment over killa No. 69//26/3/2. The local commissioner undertook the demarcation with the help of total station machine in presence of both the parties and a site plan was prepared, in which the encroached area was shown with blue colour. That itself was a sufficient proof that the plaintiff has been able to prove the encroachment. The contention raised that the said report cannot be relied

upon, as there is a note in the same that the present revenue record of the suit land does not tally with the record prepared during consolidation of the land, due to which area of killa number increased at the spot, can be of no help to the defendant. It was not a case of the defendant that the land was with them at the time of consolidation. In other words, the land purchased by the defendant was as per the present revenue record and no benefit can be drawn from the fact that the present revenue record has some difference in area with the revenue record prepared at the time of consolidation.

There is another angle to the entire controversy. The defendant has to raise construction within its own property. There is no dispute with regard to ownership of the suit land. The defendant had failed to establish that the disputed wall and gate was installed by them in their own property. Thus, the only contention raised by learned counsel for the defendant has to be rejected.

During the course of hearing, learned counsel for the defendant could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any

substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no order as to costs.

December 08, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes