

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

147

RSA No.5542 of 2017 (O&M)

Date of decision: 07.12.2017

Rajbir and others

..... Appellants

Versus

Jeet Ram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Saurabh Dalal, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiffs had filed a suit for possession with a consequential relief of permanent injunction claiming that the defendants have encroached upon a part of plot No.133. It was further pleaded by the plaintiffs that they have got the land demarcated on 26.12.2010 and the defendants were found to have encroached upon the part of the plot belonging to the plaintiffs. However, defendants refused to hand over the vacant possession.

Defendants contested the suit by claiming that they are owners of plot No.211 and 212 purchased in the year 1970.

During the course of trial, a Local Commissioner was appointed by the Court who again visited the spot and again reported that defendants have encroached upon some part of the plot of the plaintiffs.

Plaintiffs in order to prove the first demarcation examined Ombir Singh, Naib Tehsildar who had carried out demarcation.

Learned trial Court after appreciating the evidence available on

the file decreed the suit on the basis of Local Commissioner appointed by it.

First appeal preferred by the defendants-appellants was dismissed after re-appreciating the evidence available on the file.

I have heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants has submitted that the report of the Local Commissioner appointed by the Court during the pendency of the suit (cannot be looked into) as he not been examined in evidence.

I am afraid such argument cannot be accepted. Local Commissioner is appointed by the Court in exercise of power under Order 26 Rule 9 and 10, CPC. The Local Commissioner is appointed to carry out local investigation. He is an Officer of the Court. The reports submitted by them are admissible in evidence. The defendants did not file objections to the report or have called him for cross-examination. However, merely because that Local Commissioner had not been examined, his report cannot be discarded.

Learned counsel for the appellants could not point out any misreading of evidence or non-reading of substantive evidence.

In view thereof, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

07.12.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No