

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

1. RSA No.637 of 2017 (O&M)
Date of decision : 30.10.2017

Barjinder Singh and another

...Appellants

Versus

Bakhtawar Singh

...Respondent

2. RSA No.714 of 2017 (O&M)
Date of decision : 30.10.2017

Barjinder Singh and another

...Appellants

Versus

Bakhtawar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Khunger, Advocate for the appellants.
(In both appeals)

ANIL KSHETARPAL, J. (ORAL)

By this common order, I shall be disposing of RSA Nos.637
and 714 of 2017.

Plaintiffs-appellants are in appeal against the concurrent
findings of fact arrived at by the Courts below.

Plaintiffs had filed a suit for permanent injunction restraining
the defendant from demolishing the wall and removing the mud from the

property in possession of the plaintiffs. The plaintiffs claimed that they are owner in possession of the land comprised in Khasra Nos.90/1 and 90/2.

Defendant filed a written statement and a counter claim to claim that the plaintiffs are in unauthorized possession of the property owned by him. The plaintiffs are owners of Khasra Nos.90/1 and 90/2 whereas defendant is owner of land comprised in Khasra No.89. Earlier demarcations were carried out. However, pursuant to the order passed by this Court, last demarcation was carried out in the year 2014. This demarcation was carried out with a Total Station Machine (Theodolite). This is a GPS based system which has bright chances of accurate demarcation. As per the demarcation report, Ex.DW3/A on the file, carried out by the Tehsildar, it was found that the plaintiffs have encroached upon certain area of the defendant.

It is not in dispute that no objections were filed by the plaintiffs against the aforesaid report. It is further not in dispute that the aforesaid Local Commissioner who had carried out the demarcation was not summoned in the Court or cross-examined by plaintiff. The credibility of the report submitted by the Local Commissioner has not been impeached.

Learned counsel for the appellants has very vehemently argued that the aforesaid Local Commissioner has not appeared in the witness-box. He has not even come forward to submit his report. He had sent only Patwari, a local Revenue Officer who had submitted the report aforesaid.

Patwari has been examined in evidence. It is not in dispute that the aforesaid Patwari was part of the team who had assisted the Tehsildar in carrying out the demarcation. Even on reading of the cross-examination of

this Patwari, the correctness of the report could not be impeached.

Learned counsel for the appellants has vehemently argued that there was a settlement arrived at between the parties and according to that settlement, if a party is found to be in unauthorized possession, he shall only be liable to pay to the other party at the rate of ₹24,000/- per marla.

I have considered the submissions. If the parties had entered into a settlement, which was out of the Court, the parties would be free to resolve their dispute.

In the present case, the plaintiffs and the defendant have litigated before the Court. There is no deed of settlement/compromise which has been filed on the file.

Taking into consideration the aforesaid facts, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Both appeals are dismissed.

30.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No