DHARAM VIR
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA no. 3768 of 1987
Date of Decision:01.11.2018

Sat Pal .....Appellant

Vs.

Jyoti Dhillon and others ....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.S.P.Garg, Advocate,
for the appellant.

Mr.Kanwalvir Singh Kang, Advocate,
for respondent no.1

AMOL RATTAN SINGH, J. (Oral)

By this appeal, the appellant challenges the judgments of the learned courts below, decreeing the suit of respondent no. 1 (plaintiff), by which she sought possession of property measuring 0 kanal 05 marlas (stated to be depicted as contained in 'ABCD' in the site plan with the plaint), falling in Rect. no. 06, *Killa* no. 21/2, as per the *'Jamabandi'* for the year 1979-80, in respect of the revenue estate of Devigarh, then Sub-Tehsil Patran, District Patiala.

2. The trial Court, on the basis of the evidence led, came to the conclusion that the plaintiff had purchased 07 kanals and 10 marlas of land from one Hardyal Singh, vide a sale deed dated 06.04.1973, with the suit land, i.e. 05 marlas, falling in *Killa* nos. 21/1 and 21/2, whereas the appellant (defendant no. 1) and defendant no. 2 (not an appellant in this appeal) purchased 06 marlas of land from the said Hardyal Singh, vide a sale deed

dated 03.06.1975, the said 06 marlas falling in *Killa* no. 22 of Rect. No. 6 in the same revenue estate.

Admittedly the said two *Killa* numbers abut each other.

The entire dispute is therefore with regard to whether the 05 marlas claimed by respondent no. 1-plaintiff falls in Killa no. 21 or in Killa no. 22.

3. On appraising the evidence, including a site plan prepared by a revenue authority *(Kanungo*), Ex.PW5/A, the trial Court decreed the suit of the plaintiff, the decree therefore being in respect of the 05 marlas depicted as 'ABCD' in the site plan attached with the plaint.

The first appellate court, even while dismissing the appeal of the present appellant-defendant however agreed with the contention that there was no document on record showing the encroached area (encroached by the appellant as per the plaintiff), shown to be depicted as 'ABCD', the only plan being the one prepared by the *kanungo*, alongwith his report Ex.PW5/A. In that site plan the encroached area was actually depicted as 'BCEF' and consequently, the trial Court should have decreed the suit holding that the area depicted within the letters 'BCEF' on the site plan would be the one possession of which would be given to the plaintiff- decree holder, <u>after demarcation</u>.

4. Learned counsel for the parties are *ad idem* that there is only one site plan available on the record of the learned Courts below as was led by way of evidence, which is infact the site plan on the basis of which the revenue authority had prepared the report, i.e. Ex.PW5/A.

However, even that factual aspect/controversy infact need not to be gone into by this Court at all, in view of the fact that both learned counsel are also *ad idem* that the holding of the appellant is contained in Khasra no.22,

with the holding of respondent no.1 (plaintiff) being contained in Khasra no.21/1 and 21/2. Neither does the appellant claim to be owner of any land contained in *khasra* no.21 nor does the respondent claim to be the owner of any land contained in *khasra* no.22.

5. That being so, this appeal, in which in any case no question of law needs to be adjudicated upon, is disposed of while upholding the judgments of the learned Courts below, but further clarifying what is contained in the judgment and decree passed by the learned Ist appellate Court, to the effect that the executing Court would have the suit land clearly demarcated in the presence of the parties, by the Tehsildar having jurisdiction over the area concerned, to determine as to what part thereof falls in *Khasra* no.22 and what part falls in *Khasra* nos.21/1 and 21/2.

All such land as is contained in Khasra no.22 would be deemed to be in the ownership of the appellant and that contained in Khasra nos.21/1 and 21/2 to be in the ownership of the respondents/plaintiffs, to possession of which they shall be entitled.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

November 01, 2018.
nitin/dharamvir

Whether speaking/reasoned : YES
Whether Reportable : NO