

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

**RSA No.944 of 1988 (O&M)
Date of Order: 16.11.2018**

Biru Ram etc.

..Appellants

Versus

Nikku

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Balbir Singh, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, decreeing the suit filed by the plaintiff for possession on the ground that the defendants-appellants have encroached upon some part of his land.

Defendants contested the suit and pleaded that they are in possession since 1940. They also in alternative claim that they have perfected their title by way of adverse possession.

During the pendency of the suit, property was got demarcated and it was found that the defendants-appellants have encroached upon certain area. Accordingly, the suit filed by the plaintiff was decreed, which has been upheld in first appeal after re-appreciation of evidence.

During the pendency of the appeal, defendants-appellants filed an application under Order 41 Rule 27 of the Code of Civil Procedure, seeking to produce on record following documents:-

“(i) Certified copy of order dated 12.5.1988, passed by Shri K.C.Maini, Addl. Director, Consolidation of Holdings, Punjab.

(ii) Certified copy of order dated 19.9.1988, passed by Consolidation Officer, Hoshiarpur.

(iii) Certified copy of Mutation No.1889 dated 20.04.1990.

(iv) Certified copy of Field Book.

(v) Certified copy of Shijra Akas.”

Since, no one was appearing for the respondent, therefore, in order to verify the correctness of the assertions made in the application, and the order passed by Additional Director, Consolidation of Holdings, revenue officials were directed to re-demarcate the area and submit a report vide order dated 20.08.2018, which reads as under:-

“Defendants-appellants are in the regular second appeal. Dispute in the present case is with regard to encroachment of 3 marlas land out of khasra No.704/2. Out of khasra No.704 (original), the plaintiffs are entitled to 11 marlas of land whereas remaining 19 marlas of land belongs to the defendants. During the pendency of the present appeal, an application for additional evidence has been filed drawing attention of the Court to the order passed by the Consolidation Officer. Certified copy of the corrected field book and Akshajra pointing out that there was error in the field book which has been corrected.

Since pursuant to the aforesaid corrected field book and Akshajra, land would be required to be re-demarcated, therefore, it is considered appropriate that Tehsildar, Hoshiarpur be directed to depute a Senior Revenue Official to carry out demarcation of khasra No.704/1 and 704/2 separately. The Revenue Official must also report as to how much area is in 704/1 and how much area is in 704/2 and whether there is any encroachment or not by any of the party. Let this demarcation be carried out after notice to the parties. Appellants are directed to take a certified copy of the order and produce before the concerned Tehsildar for compliance. The Revenue Official shall be entitled to charge for the demarcation to be carried out in accordance with Government instructions.

Let the report after getting the demarcation carried out be remitted to this Court by 26.10.2018.

To be listed in the urgent list.”

Revenue officials have once again demarcated the area and have found that the defendants-appellants are in unauthorised possession of the land, belonging to the plaintiff. No doubt, it has also been pointed out that the plaintiff-respondent is also in possession of certain area belonging to the defendants-appellants. However, since there was neither any counter claim nor issue on the aforesaid aspect was framed by the courts below, therefore, this court cannot go into that aspect.

In view of the fresh demarcation report,even if the documents

filed with application for additional evidence are taken into consideration that does not advance the case of the appellants.

Accordingly, the application for additional evidence as well as the regular second appeal is dismissed.

November 16, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No