

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1510 of 1990

Date of Decision: July 12, 2018

Harlal (since deceased) through L.Rs & others

...Appellants

Versus

Himat Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Ramesh Hooda, Advocate,
for the appellants.

None for the respondents.

AMIT RAWAL, J.

Appellant-plaintiffs are in Regular Second Appeal against the judgment and decree dated 29.3.1989 rendered by the Lower Appellate Court allowing the appeal preferred by the respondent-defendants against the judgment and decree dated 25.11.1987, whereby the suit of the appellants-plaintiffs for possession of the suit property was decreed.

Appellant-plaintiffs instituted the suit in the year 1984 claiming possession of the suit property on the premise that they are owners of a plot comprised in Khewat No.247, Khatoni No.267, Khasra No.375 measuring 3 kanals 18 marlas with the dimensions given in the suit. It was alleged that the respondent-defendants were in occupation of the part of Khasra No.375

and, thus, sought the possession.

Respondent-defendants contested the suit by alleging that the site in dispute is owned by them and the same was part of Khasra No.374 and had constructed the house, Chhapar, Bitoras and Khor etc. It was being used for the purpose of tethering cattle.

Since the parties were at variance, the trial Court framed the following issues:-

- 1) Whether the plaintiffs are owner in possession of the plot in dispute? OPP*
- 2) Whether defendants have encroached upon the portion mentioned in Para No.2 of the plaint being part of plot No.375? OPP*
- 3) Whether the site in dispute forms part of Khasra No.374? OPD*
- 4) Whether the plaintiffs have no locus standi to file the present suit? OPD*
- 5) Whether the suit is time barred? OPD*
- 6) Whether the defendants have become owners of the site in dispute by way of adverse possession? OPD*
- 7) Whether the suit is bad for non-joinder of necessary parties?OPD*
- 8) Whether the defendants are entitled to special costs under Section 35-A CPC? OPD*
- 9) Whether the suit is not maintainable in the present form? OPD*
- 10)Relief.*

Appellant-plaintiffs examined as many as five witnesses, namely, PW-1 Naresh Pal Record-keeper, PW-2 Narain Singh Office Kanungo, Jhajjar, PW-3 Har Lal, one of the plaintiffs, PW-4 Sultan Singh and PW-5 Harmal. On the other hand, respondent-defendants examined DW-1 Deep Singh, one of the defendants, DW-2 Ran Singh and DW-3

Himmat Singh. Appellant-plaintiffs also brought on record Ex.P1 demarcation report, Ex.P1/A site plan, Ex.P2 jamabandi, Ex.P3 site plan and Ex.P4 Ak-shijra.

The trial Court, on the preponderance of the evidence by noticing the report Ex.P1 of the demarcator, i.e., Kanungo PW-2, decreed the suit. The respondent-defendants challenged the aforementioned judgment and decree before the Lower Appellate Court. On perusal of the evidence brought on record, the Lower Appellate Court reversed the findings of the trial Court on the premise that the Kanungo, who had demarcated the land in dispute, i.e., part of khasra number, alleged to have encroached by the defendants, was not done in the presence of the defendants and measurement had taken place from one portion.

Mr.Rajesh Hooda, learned counsel representing the appellant-plaintiffs, in support of the memorandum of appeal, raised the following submissions:-

- 1) Judgment and decree of the Lower Appellate Court suffers from illegality and perversity as defendants had not led any evidence to belie the demarcation report Ex.P1 nor any objections were filed, thus, the report Ex.P1 could not have been rejected on technical grounds;
- 2) If at all the demarcation report was found to be wanting compliance of provisions, the Lower Appellate Court should have exercised jurisdiction in appointing the Local Commissioner, but should not have dismissed the suit;
- 3) Defendants did not get the property demarcated to establish that they were in possession of Khasra No.374 and not

of 375 as asserted by the plaintiffs and, thus, urged this Court for setting-aside the aforementioned judgment and decree of the Lower Appellate Court.

There is no representation on behalf of the respondent-defendants. The appeal is of the year 1990. Accordingly, I proceed to decide the appeal on merits.

I have heard the learned counsel for the appellant-plaintiffs, appraised the paper book and records of the Courts below and of the view that there is no force and merit in the submissions of the learned counsel for the appellants, for, the demarcation report Ex.P1 reveals that the Kanungo did not demarcate the land in the presence of the defendants. It was an unilateral act on behalf of the Kanungo. The site plan is also to the same effect.

On perusal of the report and as well as cross-examination of the Kanungo, it is also revealed that he had measured the alleged encroached area from one portion, which is not the requirement of law. It should have been done from all the corners, though an attempt was made to place on record the site plan to prove the alleged encroachment.

Jamabandi Ex.P2 of the year 1981-82 showed the ownership of the suit property to be that of the plaintiffs. They have to stand on their own legs as per the provisions of Section 101 of the Indian Evidence Act. Having failed to discharge the onus, no occasion arose for the defendants to rebut the same, thus, the argument of Mr.Hooda that the defendants did not take any steps for demarcation falls flat and is hereby rejected.

For the reasons stated above, the findings arrived at by the Lower Appellate Court do not call for any interference enabling this Court

to form a different opinion than the one already arrived at. No substantial question of law arises for determination by this Court.

Resultantly, the Regular Second Appeal is dismissed.

July 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No