

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

RSA No.204 of 1990 (O&M)

Date of decision : 22.01.2018

Surta @ Surjit and another

...Appellants

Versus

Satia

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aashish Gupta, Advocate for the appellants.

Mr. A.K. Ahluwalia, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for mandatory injunction seeking decree against the defendants for unauthorisedly encroaching upon the passage for ingress and egress to the fields. With the consent of the parties, learned trial Court had appointed a Local Commissioner namely Telu Ram, Kanungo Halqa, Narwana. He was directed to visit the spot and demarcate the passage in dispute. Local Commissioner visited the spot and demarcated the passage and submitted a report to the Court that the defendants had in fact encroached upon the passage measuring 11 marlas. The Court passed a decree in favour of the plaintiff directing the defendants to remove the encroachment.

The first appeal preferred by the defendants came to be dismissed after re-appreciation of the evidence available on the file.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below as well as the record.

Learned counsel for the appellants has submitted that the Civil Court does not have jurisdiction to adjudicate upon such dispute as the passage vests with the Gram Panchayat. Next argument of the learned counsel is that the plaintiff has to stand on his own legs.

I have considered the submissions of the learned counsel for the appellants. However, I do not find any substance therein. In this case, there is no dispute with regard to the title of the property. The only dispute with which the plaintiff filed the civil suit is that the defendants have encroached upon common passage which is being used for ingress and egress. In such circumstances, the jurisdiction of the Civil Court to adjudicate upon such dispute cannot be held to be barred.

Next submission of the learned counsel is that the plaintiff has to stand on his own legs. No doubt, this is fundamental in civil law, however, in the present case, with the consent of the parties, since the dispute was only with regard to the measurement, hence, the Local Commissioner was appointed. The Local Commissioner submitted a report after demarcating the site. No objection to the report of the Local Commissioner was filed. The Local Commissioner had also found that the defendants-appellants have encroached upon the land, hence, the Courts below decreed the suit. In the considered opinion of this Court, once the

case of the plaintiff was supported by the report of the Local Commissioner after demarcation, sufficient evidence was available with the Court to decree the suit

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in terms of the abovesaid judgment.

22.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No