

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

466

RSA No.791 of 1993 (O&M)
Date of decision: 09.03.2018

Hans Raj and another

..... Appellants

Versus

Lajja Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep Bansal, Advocate
for the appellants.

None for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Learned counsel for the appellants has pleaded no instructions.
Hence, this Court proceeds to decide the case in the absence of assistance from
learned counsel for the appellants.

Plaintiffs-appellants are in appeal against the judgment passed by
the learned First Appellate Court.

Dispute is between the neighbours. Plaintiffs filed a suit for
possession on the basis of demarcation carried out prior to the filing of the suit.
Learned First Appellate Court has given cogent reasons to ignore the
demarcation report on the basis whereof the suit was filed. The reasons
recorded by the learned First Appellate Court are extracted as under:-

*“It is no body's dispute that khasra No.947/187 is owned by the
plaintiff and that the defendant has no concern with that khasra
number. The sole fact to be determined in the present case is as to
whether the defendant was in possession of any parcel of the land
comprised in that khasra number or not. To say that it stood
proved on the record that 3 biswas and 12 biswas is area of that
khasra was in possession of the defendant, the learned lower Court*

has mainly relied upon the report of the Qanungo who is said to have made the demarcation and the evidence of the two witnesses, who allegedly were present at the time of that demarcation. What is now to be seen is as to whether that demarcation can be said to be sufficient proof of that fact in the peculiar facts and circumstances of the case. The first and the fore-most thing to assail the report of the demarcation is the fact that the demarcation was obtained by the plaintiff much prior to the filing of the present suit and not in the suit itself. That order of demarcation was obtained by the plaintiffs without giving notice of that fact to the defendant. The defendant was not called upon to file any objections to that report of demarcation and it was also argued by the counsel for the appellant that said report of demarcation was not as per the requirements contained in Section 101 of the Punjab Land Revenue Act and Chapter 1-M of Volume 1 of Punjab High Court Rules and Orders. The report of the demarcation was also assailed on some such like facts. I have seen the report and the testimony of the Qanungo, the Sarpanch and the other witnesses in that context. What has been said in the report Ex.P1 is that Lajja Singh defendant was called through Sewadar Rameshwar but he (Lajja Ram) had not come present. But when coming in the witness-box Qanungo Ajit Singh has said that no written notice was given to Lajja Ram defendant by him and then he had denied the suggestion that defendant was not present at the spot or that he was not called. There is thus some contradiction in the report of the Qanungo and his testimony in the Court. Not only this, there is clear contradiction between the statements of the persons who are said to be present at the time of demarcation. According to Ajit Singh Qanungo, Lajja Ram defendant was not present at the time of demarcation whereas Teja Ram Sarpanch had said in no un-certain terms that Lajja Ram defendant was present at the spot at the time of demarcation. Hans Raj plaintiff has also said in clear and unequivocal terms that at the time of measurement Lajja Ram was present at the spot. This fact in itself is sufficient to make such like report of demarcation to look suspicious. I have perused the report Ex.P1 and it reveals that the requirements of demarcation as prescribed

in Section 101 of the Punjab Land Revenue Act and Chapter 1-M Volume 1 of Punjab High Court Rules and Order were not complied with. There is no mention in the report that any pacca Thadda was made or that any measurement of khasra No.947/183 and the khasra number the land of which admittedly is in possession of the defendant, besides the land in dispute were actually measured. In the course of his cross-examination also Ajit Singh had to admit that he did not mention in his report as to where from the boundaries of the villages join and as to where the same end. It has thus been said in the course of his cross-examination in very clear terms by Ajit Singh that the disputed land was not part of Khasra No.947/183. It that is the case, the plaintiff has got no case at all. He has no legs to stand and the very fabric of his case goes away. The case set up by the plaintiff was only this that 3 biswas and 12 biswas is out of khasra No.947/183 was in illegal possession of the defendant where he is said to have erected two pillars and had opened the doors and windows of his house. In the report and the statement of the Local Commissioner, there is no mention of any such pillar and widows etc. of the house of the defendant. PW3 Teja Singh Sarpanch has stated that only the khasra number of the plaintiffs was demarcated. With that also, the point in issue could not possibly be determined. The crucial point that the area forming part of khasra No.947/183 was in possession of the defendant, has not been proved by convincing evidence and the findings of the lower Court regarding that fact are set aside.”

The reasons given by the learned First Appellate Court are after appreciation of evidence available on the file. Hence, this Court does not find any good ground to interfere with the finding of fact arrived at by the learned First Appellate Court.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

09.03.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No