

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

**RSA No.4961 of 2012 (O&M)
Date of Order:03.05.2018**

Rakesh Mohan Puri and others

..Appellants

Versus

Satish Kumar Khanna and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Mahajan, Advocate,
for the appellants.

Mr. Naveen Batra, Advocate, and
Ms. Rajni Maurya, Advocate,
for the respondents

ANIL KSHETARPAL, J.

Plaintiff-appellants are in the regular second appeal against the judgments passed by the courts below.

Plaintiff filed a suit for permanent injunction and mandatory injunction praying for restraining the defendants from making any encroachment and removing the encroachment, if any, raised during the pendency of the suit.

During the pendency of the suit, an application was moved by the plaintiff-appellant for appointment of the Local Commissioner. However, the learned court directed the plaintiff to get the land demarcated from the revenue officials. Thereafter, a report was submitted that the aforesaid revenue official was examined in the court as PW3 i.e Varinder Kumar Kanungo. Plaintiff claims that he had purchased 11 marlas of land/plot through two sale deeds dated 30.03.2000 and 31.03.2000, whereas

defendants claim that they had purchased 1 kanal and 11 marlas land/plot vide sale deed dated 13.01.1989 and have constructed a godown.

The only dispute between the parties is whether defendants had encroached upon any part of the land owned by the plaintiff or not? Hence, it can be decided only after a proper demarcation is carried out.

Both the courts below have found that the demarcation was not carried out in accordance with the instructions which have been incorporated in the High Courts Rules and Orders. Hence, both the courts have rejected the report of the revenue officials.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below.

In the considered opinion of this court, plaintiff had made efforts to get the land demarcated from a revenue officials and prove before the court that there is an encroachment by the defendants. At the time of arguments, the aforesaid report submitted after carrying out demarcation was rejected. Once the courts found that the evidence produced by the plaintiff in the shape of report of the revenue officials was found defective and conducted in accordance with the procedure laid down in the High Courts Rules and orders, it was incumbent on the court to grant an opportunity to the plaintiff. While rejecting the report, the courts were not justified in dismissing the suit particularly when the only dispute involved in the present litigation is as to whether there is any encroachment or not?

In view of the aforesaid, the case is remitted back to the learned first appellate court to appoint a revenue official afresh to carry out the demarcation with specific directions that the demarcation should be carried

out in accordance with the procedure as prescribed in the High Courts Rules and Orders.

Hence, the appeal is allowed, judgment of the trial court is set aside.

Needless to say that any observation made by this court or by the first appellate court shall have no bearing when the first appellate court takes up the case for disposal.

Parties through their counsel are directed to appear before the learned first appellate court, on 22.05.2018.

May 03, 2018
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(ANIL KSHETARPAL)
JUDGE

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