

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

SAO-34-2012 (O&M)

Date of decision : 15.5.2018

Harvinder Kaur

.....Appellant.

Versus

Puran Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rakesh Gupta, Advocate for the appellant.

Mr. Sherry K. Singla, Advocate for the respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present appeal is the judgment and decree dated 26.3.2012, passed by learned Additional District Judge (Fast Track Court), Bathinda vide which the judgment and decree dated 7.10.2010, passed by learned Civil Judge (Junior Division), Talwandi Sabo was set aside and the case was remanded back to the trial Court to pass fresh judgment after giving ample opportunities to both the parties to lead further evidence to prove or disprove the facts that suit land falls in khasra No. 277//5/2//2/4 min (1-0). Both the parties were also given liberty to get appointed some expert revenue officer as local commissioner to prove their respective claims.

Heard.

The perusal of the lower Courts judgment shows that plaintiff filed a suit for possession claiming that his land measuring 6.5 marlas bearing khasra No. 277//5/2/2/4 min (1-0) has been illegally encroached upon by defendants. He had also claimed that *Tatima* prepared by the Patwari on mutation No. 15037 of Talwandi Sabo is wrong and illegal. The permanent injunction was also sought restraining the defendants from raising construction over the said property and alienating the same.

Before the trial Court, plaintiff failed to prove the encroachment. He also failed to lead evidence that *Tatima* prepared by the Patwari on mutation No. 15037 is wrong and consequently suit was dismissed on 7.10.2010 by learned Civil Judge (Junior Division) Talwandi Sabo.

In the appeal, lower Appellate Court took the view that dispute is regarding demarcation. It was also noticed that the demarcation report Ex. D-4 was proved by the defendant. The said demarcation was conducted at the behest of the plaintiff. It was also noticed that plaintiff has raised construction over 13-1/2 marlas of land whereas defendant has raised construction upon 16 marlas of land. Both the parties have purchased one killa each. It was also observed that application was filed for demarcation of disputed khasra numbers. The said application was dismissed by the trial Court on 17.3.2009. The trial Court held that demarcation is necessary, therefore, the case was remanded back.

I am of the view that the approach of the lower Appellate Court is erroneous. First of all the order dated 17.3.2009 was not challenged in the grounds of the appeal. In any case, both the parties are in possession of less

land than purchased by them. Basically, it was the duty of the plaintiff to prove that other party has encroached upon his land. He failed to lead such evidence. He also failed to challenge the order dated 17.3.2009. In any case, if the lower Appellate Court felt that there is a necessity of demarcation the lower Appellate Court could itself appoint the local commissioner who could have been examined as a Court witness and both the parties given opportunities to cross examine the said witness in order to find out that whether there is any encroachment as claimed by the plaintiff-respondent. In any case, the remanding of the case which would virtually result in de novo trial. It is for the plaintiff to prove his case. None of the parties have filed any application for leading additional evidence before the lower Appellate Court.

As such impugned judgment and decree dated 26.3.2012 passed by learned Additional District Judge, (Fast Track Court), Bathinda is set aside. Lower Appellate Court is directed to rehear the appeal. If the lower Appellate Court finds that demarcation is necessary, it will always be at liberty to appoint some local commissioner to demarcate the land in the presence of both the parties and then examine the said witness as a Court witness and thereafter allow both the parties to cross-examine the said witness to find out the correct position.

With the above noted observations present appeal is allowed.

Both parties are directed to appear before the Successor Court of learned Additional District Judge Fast Track Court, Bathinda on 11.7.2018 at 10. A.M. Lower Appellate Court is directed to decide the appeal expeditiously considering that the dispute has become quite old.

Since, the main appeal is allowed, the miscellaneous application pending, if any, also stands disposed of.

15.5.2018
preeti

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether Reportable:	No