

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

R.S.A.No.3879 of 2013 (O&M)

Date of Decision: February 09, 2018

Rajbir & others

...Appellants

Versus

Ram Kanwar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr.Sudhir Aggarwal, Advocate,
for the appellants.**

**Mr.Balram Prashar, Advocate for
Mr.Jagmohan Ghuman, Advocate,
for respondent No.1.**

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby the suit filed by the respondent-plaintiffs seeking declaration that they are owners in possession of area bearing Khewat No.35, Khata No.46, Rect.No.21, Killa No.25/3, measuring 1 kanal, situated in the revenue estate of Mauja Hayattpur, Tehsil Gurgaon with possession by demolishing the illegal construction and removal of material, has been decreed by both the Courts below.

The respondent-plaintiffs instituted the aforementioned suit on the premise that they are owners in possession of the land bearing Khewat No.35, Khata No.46, Rect.No.21, Killa No.25/3, measuring 1 kanal, situated in the revenue estate of Mauja Hayattpur, Tehsil Gurgaon. In the month of July, 2006, the appellant-defendants started filling the foundation over the suit land, which necessitated them to make a request, but the defendants did

not stop and resultantly an application for demarcation of the land was moved to the revenue officer. The Tehsildar Gurgaon appointed a revenue official to make the demarcation, which was done on 26.8.2006 in the presence of the parties and it was reported that the appellant-defendants had made encroachment over the suit land.

The suit was contested by the appellant-defendants by denying ownership, title and interest of the respondent-plaintiffs and all customary objections were taken. On merits, it was stated that the report of the revenue official was not in accordance with the directions of the revenue authorities. Respondent-plaintiffs in support of the averments, besides examining PW-1 Mann Singh and PW-2 Ram Kumar, also tendered into evidence following documents:-

- a) Ex.P1- Site plan
- b) Ex.P2- Jamabandi for year 2004-05
- c) Ex.PW2/E- Aks Shizra
- d) Ex.PW2/A- LC application
- e) Ex.PW2/B- Attendance report
- f) Ex.PW2/C- LC Report
- g) Ex.PW2/D- Site plan

On the other hand, the appellant-defendants examined DW-1 Rattan Singh and tendered into evidence jamabandi for the year 2004-05 as Ex.DA and jamabandi Ex.DB for the same year.

Mr.Sudhir Aggarwal, learned counsel representing the appellant-defendants submits that the demarcation was not done as per the High Court Rules and Orders as no pucca points were fixed before demarcating the land. It was incumbent upon the respondent-plaintiffs to effect the demarcation in the manner and mode as indicated above. The aforementioned demarcation report despite having been exhibited as

Ex.PW2/C and site plan Ex.PW2/D, has not proved the case of the respondent-plaintiffs as they failed to discharge the onus in view of the provisions of Section 101 of the Indian Evidence Act. The suit was, thus, not maintainable. All these points did not weigh in the mind of the Courts below for the purpose of decreeing the suit. Nothing prevented the respondent-plaintiffs to seek indulgence of the trial Court for appointment of a Local Commissioner over and above the report of the demarcation. In fact, the appellant-defendants are owners in possession of Rect.No.22, Killa No.21/1/1, whereas the respondent-plaintiffs are owners in possession of Rect.No.21, Killa No.25/3 and in between these two killa numbers, the land, i.e., Killa No.25/4 is owned by Om Parkash, who was not impleaded as a party.

Per contra, Mr.Balram Prashar, Advocate for Mr.Jagmohan Ghuman, learned counsel for respondent No.1 submits that the concurrent findings of fact cannot be interfered with unless and until there is a gross illegality or perversity. The report was not exhibited. The Tehsildar conducted the demarcation with the help of measurement tape and it was found that there was encroachment of 77 sq.yards. If at all, the appellant-defendants had any grievance, they could have also got the area demarcated at their own level, but having failed to do so, adverse inference has rightly been drawn and, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendants. Nothing prevented the appellant-defendants to get the demarcation done on their own level during the pendency of the suit by taking the assistance of the

Court. The report of the revenue official has been exhibited without any demur or objection. As per the report, it has been found that the appellant-defendants are in illegal possession of an area of 77 sq.yards and the dimension of 48' in eastern side, 50' in eastern side and 14.5' in southern side. The said encroachment is in the shape of triangle. It was in tune with the site plan. The Local Commissioner, i.e., the Office Kanungo also prepared the memo of presence and got signature of various people of village Hayattpur. He had followed the proper procedure by fixing one burji for the purpose of demarcation and also had even noticed a boundary line, i.e., Phirni of the village. All these factors have been extensively noticed by the Lower Appellate Court while dismissing the appeal preferred by the appellant-defendants.

In my view, the Courts below have rightly drawn a presumption in favour of the respondent-plaintiffs and against the appellant-defendants. No other argument has been raised. I do not find any illegality or perversity in the impugned judgments and decrees. No ground for interference is made out. Resultantly, the appeal is dismissed.

February 09, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No