

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CM-5276-C-2016 in/and
RSA-1988-2016 (O&M)
Date of Decision : 28.9.2018

Rajender(deceased) through his LRs and othersAppellants

vs.

Raghubir Singh (deceased) through his LRs and othersRespondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. S.P.Chahar, Advocate
for the applicants-appellants.

AJAY TEWARI, J. (Oral)

CM-5276-C-2016

For the reasons recorded, the application is allowed. Delay of
54 days in filing the appeal is condoned

Main Case

This appeal has been filed against the concurrent judgments of
the Courts below decreeing a suit for possession by the respondents. The
case of the respondents was that they were owners of plot measuring 15
Marlas in Khasra No.79 in village Nimana, Tehsil and District Jhajjar and in
their absence the appellants had encroached upon a portion mark 'AEFD'
and joined it to their adjacent plot.

Both the parties led evidence, in the form of oral evidence and
in the form of plans and examination of draftsman who had prepared them.

Counsel has accepted that after evidence was led, the Court had deemed it to

be fit to appoint local Commissioner to demarcate whether disputed portion fell within khasra No.79 (as alleged by respondents) or fell within plot No.213 as claimed by the appellants and appointed the office Kanungo to go and demarcate the site. Admittedly, officer issued notice to both parties. Both the parties appeared but the appellants refused to sign the report. Considering the fact that property was within abadi the problem was to demarcate a pakka point and he took an existing temple as a pakka point. He gave a report concluding that the appellants had encroached upon the plot in dispute. Both the Courts having decreed the suit, the appellants are before this Court.

The only argument raised by the learned counsel is that the local Commissioner did not conduct the inspection as per the instructions of the Financial Commissioner and the rules of this Court in so much as neither three pakka points were identified and even the identification of temple as a pakka point was a conjectural fixation. Both the Courts below have considered this argument and have held that firstly, the appellants' refusal to sign the report raised an adverse inference against them. Secondly, their omission to summon the local Commissioner to give evidence and to confront him with his report was also taken as a factor against them. The Courts below also-and rightly in my considered opinion-realized that in an area where there is abadi it may not be possible to conduct demarcation as if it is an agricultural land. Ultimately, both the Courts below concluded that the respondents had been able to establish a preponderance of probability, howsoever slight, and decreed the suit.

In the totality of the circumstances, I am not persuaded to hold

that the findings of the Courts below are either based on no evidence or on such perverse misreading of the evidence so as to justify the interference of this Court in second appeal.

The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

**28.9.2018
anuradha**

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No