

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision : 30.11.2018

137 RSA-1618-2015 (O&M)

Bijender @ VijenderAppellant

vs.

Smt. Kirpa Devi and othersRespondents

137-A RSA-1619-2015 (O&M)

Gram Panchayat of village Hoshangabad ..Appellant

vs.

Smt.Kirpa Devi and others ...Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Adarsh Jain, Advocate
for the appellant in RSA-1619-2015
for respondent No.4 in RSA-1618-2015.

Mr. Kul Bhushan Sharma, Advocate
for the respondents No. 2 and 3.

AJAY TEWARI, J. (Oral)

There are two applications bearing No. **CM-13066-C-2015** and **CM-13069-C-2015** for vacation of stay in terms of the order dated 28.4.2015. Learned counsel has stated that to decide the applications the whole case has to be heard and pray that main cases be also heard today

itself.

Allowed as prayed for and I have heard both the counsel.

This order shall dispose of the aforesaid two appeals as common questions of facts are involved there in.

These two appeals have been filed against the concurrent judgments of the Courts below decreeing a suit for possession filed by the respondent No.1 where she had stated that some portion of her land in Khasra No.56 had been encroached upon by Gram Panchayat as well as Bijender.

Both the Courts below relied on a demarcation report conducted on 9.9.2004 wherein presence of four panches, Sarpanch as well as Bijender is mentioned therein. As per this report, there was encroachment on Khasra No.56 which was admittedly owned by the appellant. It was in these circumstances that both the defendants the Gram Panchayat and Bijender had filed theses two appeals.

First argument raised by learned counsel for the appellant is that the Courts below have not considered an earlier demarcation report which was conducted in the year 2001. Counsel for the respondents has pointed out that both the Courts below had dealt with the report and had concluded that even if the earlier report did not show any encroachment that could not lead to an inescapable conclusion that there could not be encroachment even three years thereafter. I have gone through that report and I am of the opinion that even in that report it is not categorically mentioned that there is no encroachment. Be that as it may, the reasoning of the Courts below if there is no encroachment in 2001 it does not mean that

there can be no encroachment in the year 2004, therefore it cannot be taken to be illogical or wrong in any manner. Faced with this argument, learned counsel for the appellant tried to attack the report dated 9.9.2004 by stating that all the three pakka points were in one direction. In this connection, counsel for the respondents has argued that the fixing of pakka points is only to have a reference point for starting the measurement and the instructions of the Financial Commissioner or this Court nowhere lay down that the pakka points have to surround the property in dispute. Further, learned counsel for the respondent has argued that in the report itself it is mentioned that on the other two sides of the Khasra No.56 there is one johar and abadi and therefore also it was difficult to fix the pakka points in the johar or in the abadi (though it is not impossible). Be that as it may, I do not find anything in the instruction which lays down that the pakka points have to be on the all sides of the property to be surveyed and counsel for the respondent is correct in contending that pakka points are only a reference to start the measurement and once they have been established and measurement have been done no fault can be found with the report on this account. Even otherwise the finding of encroachment is pure finding of fact.

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 interference of this Court in second appeal.

Consequently, both the appeals stand dismissed.

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

30.11.2018
anuradha

(AJAY TEWARI)
JUDGE

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