

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

RSA No.3214 of 2016 (O&M)
Date of Order: 02.02.2018

Joginder Singh and Others

....Appellants

Versus

Gurbachan Singh and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Brij Mohan, Advocate for
Mr. S.S. Sarwara, Advocate for the appellants.

AMIT RAWAL, J (ORAL)

CM No.8595-C of 2016

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Delay of 254 days in re-filing the appeal is condoned.

Main case

The appellants-defendants are aggrieved of the judgments and decrees passed in a suit for possession filed by the respondents-plaintiffs whereby the trial Court decreed the suit and the findings were upheld by the lower Appellate Court in the appeal filed by the appellants-defendants.

It is stated that the plaintiff instituted a suit claiming ownership of land measuring 13 bighas comprised in Khasra No.221/28 (1-17), 29 (4-12), 30(6-5), 202/31(0-6) situated in village Saraj Banjara, Tehsil Rajpura District Patiala as per jamabandi for the year 2003-2004. It is further stated that the defendants have adjoining land comprised in Khasra No.30 and they

had made encroachment on an area measuring 6 Karms x 40 Karams illegally and unlawfully. Reliance has been made to an Aks Latha (cloth map) bearing Khasra No.30 and Khasra No.31. It is averred that the respondents-plaintiffs had filed an application for demarcation of suit land, which was conducted on 22.6.2006 by the Halqa Kanungo, Kheru Gajju.

Learned counsel appearing for the appellants-defendants submitted that the appellants-defendants have not encroached upon any area of the plaintiffs-respondents. It is submitted that both the parties to the main suit are co-sharers and the suit land was never partitioned therefore the said issue could not be taken into consideration for the purpose of adjudication of the nature of suit for possession. Plaintiff has miserably failed to discharge his onus. Even otherwise, the suit was barred by law of limitation as no date of alleged dispossession has been placed on record. He has referred to the statement of Gurnam Singh Kanungo, who deposed that the demarcation had not been conducted from Pakka Burji and therefore said demarcation report was required to be discarded. It is thus contended that the judgments and decrees suffer from illegality and perversity.

After hearing learned counsel for the appellants and appraising the paper book, I am of the view that the defendants have not been able to prima facie prove that the alleged demarcation vide which the defendants were shown to have encroached the land in dispute, nor any evidence has been led in this regard. Nothing prevented the defendants to place on record any other material to rely or disapprove the demarcation report. Even Ex.P.5 i.e jamabandi clearly shows that the defendants are in possession of specific portion of khasra Nos.33,34,203/31, Khewat/Khatoni No.34/64 as per their respective share of the suit land whereas the plaintiffs-respondents

were in possession of an area measuring 6 karams x 40 karams of Khasra No.30. No plausible explanation has come forward in this respect. It is in these background of the matter, the Courts had no other option but to decree the suit. Viz-a-viz the demarcation report, no other point has been urged much less any substantial question of law for adjudication by this Court.

I do not differ with the findings recorded by both the learned courts below.

Dismissed.

February 02, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No