

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

Regular Second Appeal No. 3306 of 2016 (O&M)

Date of decision: 18.9.2018

Chajjan and others

... Appellants

Versus

Khajan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jai Vir Yadav, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

The defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing the suit filed by the plaintiffs for permanent injunction as well as for mandatory injunction directing the defendants-appellants to remove their unauthorised construction on the passage which is 20 feet wide.

Plaintiff-Khajan Singh, respondent herein, filed a suit claiming that the defendants are blocking the passage and trying to raise construction. It was also prayed that if any construction is raised, a decree for mandatory injunction be passed against the defendants. The plaintiffs pleaded that the plaintiffs and defendants No.5 and 6 were owners in possession of plot No.159 and had constructed house therein and started living. However, one portion of plot No.159 was used for digging a well for utility of the villagers

and a passage was also left for reaching the aforesaid well.

The defendants contested the suit and pleaded that in a family settlement, some portion was left but it was only a private passage and the defendants have only installed a gate towards a common passage. It was further pleaded that the plaintiffs and defendants No.5 and 6 are neither owners nor in possession.

Both the courts held that the defendants failed to prove that there was any family settlement. Both the Courts further found that before filing of the suit and during the pendency of the suit, two revenue officials have demarcated the area and found that the defendants have encroached upon some part of the common passage which is 20 feet wide which because of encroachment is now 10 feet only.

Learned counsel for the appellants submitted that both the demarcation report are not admissible in evidence as three *pucca* points have not been determined. He further submitted that in none of the reports, it has been found that the property in dispute is part of plot No.159.

This Court has considered the submission.

Learned counsel for the appellants has read over both the reports of demarcation. In the first demarcation carried on 1.9.2007, the revenue official finding that the property is situated in the *abadi*, treated a common passage to be the starting point for demarcating the area. During the pendency of the suit, another official was appointed for demarcation. When he visited the site, he also demarcated the area from two sides, i.e. One from the corner of plot No.158 and the second from a common passage, the correctness of which was not being disputed by the parties. In both the

reports, it has been consistently found that it is the defendants-appellants who have unauthorisedly encroached upon some part of the common street.

In the considered view of this Court, the instructions issued by the Financial Commissioner which have been incorporated in the High Court Rules and Orders do provide for determination of *pucca* points, however same is applicable while carrying out demarcation in the agricultural fields where the pillars installed at the time of survey or consolidation are available. In the area which is already under construction, it is not possible to find out where those pillars were installed. Therefore, the officials who demarcated the area, correctly took the road or a public passage to be a starting point for carrying out the demarcation.

Still further, the suit was instituted on 6.11.2008 but at no stage, the defendants ever got the land demarcated and established before the Court that there is no encroachment or the property in dispute, is not part of Khasra No.159. In such circumstances, this Court does not find any good ground to interfere in the concurrent findings of both the courts below.

The appeal stands dismissed.

(ANIL KSHETARPAL)
JUDGE

September 18, 2018

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No