

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3473 of 2016(O&M)

Date of Decision: 4.9.2018

Harminder Lal

---Appellant

versus

Satpal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.S.S.Dinarpur Advocate
and Mr. Subhash Godara, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for possession in respect of 11 square yards of land situated towards Southern side of part of khasra No. 14//5/2/1 within the revenue estate of Chandpur, District Yamuna Nagar by demolishing the super structure was dismissed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhari and appeal preferred by unsuccessful plaintiff did not find favour with the District Judge, Yamuna Nagar at Jagadhri.

Counsel for the appellant would argue that as the demarcation report Ex. P3 has been signed by the respondent-defendant, a grave error has been committed by the courts by refusing to rely upon the demarcation report, basis of the suit filed by the appellant -plaintiff.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned.

The Court in Appeal, in para 9, has held, extracted hereinbelow:-

In the present case, the plaintiff has claiming himself to be owner, has sought possession of the land measuring 1 Marla i.e. 11 sq. yards situated at village Chandpur, District Yamuna Nagar. To substantiate his claim, the plaintiff has heavily relied on demarcation report (Ex. P3) and Naksha (Ex. P4). PW2-Sadhu Ram, Naib Tehsildar has been examined to prove these vital documents. In his cross-examination, he admits that there was no 'Burji or 'Thadda' in the area in dispute. He contends that as per standing orders of FCR the demarcation was to be done from "Pucci Burji". He also states that 'Zarib' was also not used while demarcating the place. Thus, the demarcation report cannot be said to have been prepared as per instructions of FCR. No other authentic revenue record or documentary evidence has been produced by the plaintiff-appellant to depict that the defendant is in unauthorized possession of the suit property. Even site plan of the land in dispute has not been produced. The demarcation, which does not comply with the standing orders of FCR, got done but not through the Court, but independently by the plaintiff. Further, PW3 Harminder Lal (plaintiff) failed to explain as to how much land was allotted to his father. He also stated that he is ignorant as to how much land was sold by his father. He

admitted in his cross-examination that the standing order of FCR has not been complied with at the time of demarcation. He also failed to give the dimensions of the area, which is alleged to be under encroachment. He could not specifically state as to how defendant has encroached upon his land and to what extent.”

Counsel for the appellant, in response to a query, would fairly inform that dimensions of the alleged encroachment have not been given in the plaint nor any site plan has been produced much less proved with regard to the alleged encroachment of 11 square yards of area. He has also not disputed that demarcation report has been prepared without fixing any *thadda* as it was admitted by Sadhu Ram, Naib Tehsildar PW2 that there was no *pacci burji* or *thadda* in the area in dispute and Zarib was also not used while conducting the demarcation.

Order 7 Rule 3 of the Code of Civil Procedure (in short “the Code”) deals with particulars to be contained in the plaint where the subject matter of the suit is immovable property. A relevant extract therefrom reads as follows:-

“Where the subject-matter of the suit is immovable property.- Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and , in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.”

In the case at hand, the appellant-plaintiff has neither given the boundaries and dimensions of alleged encroachment nor produced any site plan sufficient to identify the property in question. The demarcation report has been prepared without fixing any *thadda* or using Zarib. The mere fact that the demarcation report has been signed by the respondent-defendant, in the given circumstances, is not sufficient to establish plea of the appellant that the respondent-defendant has encroached upon 11 square yards out of 1 marla of land in question. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

4.9.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No