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

R.S.A No. 1218 of 2014 (O&M)

Date of Decision:- 01.11.2018

Amrit Lal Saini & Anr.

....Appellants

Versus

Surinder Pal & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. K.K. Goel, Advocate, for the appellants.

AMIT RAWAL J. (Oral)

Appellants-plaintiffs have not been successful in seeking possession and recovery of Rs.60,000/- for use and occupation charges. It was alleged that area measuring 1 kanal and 12 marla was in co-ownership of the plaintiff whereas defendants in connivance with the others encroached the portion shown as ABCD in red colour of the site plan. Demarcation of the land was got conducted from the revenue officials where it was found that the defendants were in illegal occupation. Then FIR No. 180 dated 20.05.2003 was got registered under Sections 447 and 506 of the Indian Penal Code. Defendants appeared before the trial Court, but they did not file written statement and proceeded ex parte vide order dated 09.02.2007.

In an ex-parte evidence, plaintiff No.1 Amrit Lal appeared himself as PW2 and examined Mohinder Singh as PW1 and Joginder Singh as PW3. The demarcation report Ex.P4 was tendered but the author of the same was not examined. The trial Court on the basis of the aforementioned evidence

dismissed the suit and the appeal taken before the lower appellate Court was also dismissed.

Mr. K.K. Goel, learned counsel appearing for the appellants submitted that all the afore-mentioned evidence had gone unrebutted and should not have been discarded. As regards the admissibility of evidence, onus was on the plaintiff. Jamabandi placed on record established the ownership. Courts below have ignored the aforementioned evidence and therefore there is illegality and perversity.

I am afraid that the afore-mentioned argument is not sustainable as it is settled law that mere exhibition of the documents does not dispense with its proof. The aforementioned observation of mine is derived from ratio decidendi culled out by Hon'ble Supreme Court in **AIR 1971 SC 1865** titled as **Sait Tarajee Khimchand And Ors. vs Yelamarti Satyam & others**. The Kanungo had demarcated area to prove the encroachment, but, for the reasons best known he was not examined. The Court was thus prevented from taking into consideration its authenticity. Plaintiff has miserably failed to discharge the onus. No fault can be found with the concurrent findings of fact.

Appeal does not involve any substantial question of law or impugned judgment and decree suffers from any illegality or perversity.

Resultantly the same is dismissed.

November 01, 2018
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No