

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

-.-

RSA 4067 of 2015 (O&M)
Date of decision: 09.10.2018

Darshan Singh through LRs

..... Appellant

Versus

Sarwan Singh and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vikram Anand, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for possession after removing construction and *Malba* from land measuring 7 marlas situated in village Sheikhpur, Tehsil and District Kapurthala, detailed in head-note of plaint was dismissed by the trial Court vide judgment and decree dated 11.10.2013 and appeal preferred by unsuccessful plaintiff (since deceased) now represented by his legal representatives did not find favour with the first appellate Court.

Plea of the plaintiff/appellant is that he is owner of suit land and respondents/defendants have encroached upon suit land and raised construction thereon but they have no right to continue in possession of the same.

The trial Court, in para 15 of the judgment has held, reads

thus:-

“15. As far as the relief regarding possession is concerned, a demarcation was got conducted as per the order dated 13.12.2011. Ex.CW1/A is the demarcation report according to which the alleged khasra number is shown to be in possession of Mangal Ram, Sodhi Lal, Karnail Singh, Joginder Singh. As per the demarcation report, the present defendants are not in possession of the khasra Number 69//1/4. Thus, the plaintiff has independent cause of action against the persons as mentioned in the demarcation report Ex.CW1/A and site plan Ex.CW1/B who are alleged to be in possession of the suit property. No relief can be granted against the present defendants. Thus, the plaintiff is not entitled for possession against the present defendants. Hence, this issue is decided against the plaintiff and in favour of the defendants.”

Counsel for the appellant has not disputed factual findings extracted hereinbefore. However, it has been argued that person who conducted demarcation and prepared report Ex.CW1/A was not examined by the respondents/defendants, therefore, the said report cannot form the basis to reject valid and genuine claim of the appellant/plaintiff. Another submission made by counsel is that it was for the respondents/defendants to prove that they are not in possession of the suit land.

Indisputably, the trial Court passed order dated 13.12.2011 whereby a local commission was appointed to conduct demarcation at the spot in order to find out if the suit land is in illegal occupation of the respondents/defendants. The Commission prepared demarcation report Ex.CW1/A. It is not plea of the appellant that he preferred any objections

against demarcation report Ex.CW1/A or called upon the local commission for cross examination. The very fact that the appellant did not assail correctness of report Ex.CW1/A creates estoppel against him that the said report cannot be taken into consideration for deciding the primary controversy raised in the present case.

As per demarcation report, Ex.CW1/A, Mangal Ram, Sodhi Lal, Karnail Singh, Joginder Singh who are not party to suit were found to be in possession of Khasra Number 69//1/4. Counsel for the appellant would fairly inform that application filed under Order 1 Rule 10 of the Code of Civil Procedure for impleadment of Mangal Ram etc. was dismissed by the trial Court and the order has been affirmed in revision. The trial Court has held that the plaintiff has independent cause of action against the persons mentioned in demarcation report Ex.CW1/A and site plan Ex..CW1/B who are alleged to be in possession of the suit property. In view of the above, I do not find an error much less perversity in concurrent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. However, the appellant may take recourse to appropriate remedy in accordance with law against Mangal Ram and others.

(Rekha Mittal)
Judge

09.10.2018
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No