

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 22.10.2018

1. RSA No.133 of 2017 (O&M)

Khushal Singh

..... Appellant

Versus

Amrik Singh

..... Respondent

2. RSA No.257 of 2017 (O&M)

Khushal Singh

..... Appellant

Versus

Amrik Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S. Brar, Advocate
for the appellant (in both cases).

ANIL KSHETARPAL, J.

Arguments were heard. The judgment was reserved on 17.10.2018 and the judgment is being released today.

Vide this judgment, RSA No.133 of 2017 and RSA No.257 of 2017 shall stand disposed of as one appeal has been filed from the judgment and decree passed by the learned trial Court in a suit for injunction and other against the same judgment through which counter claim for possession was decided. Two first appeals were disposed of by a single judgment.

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff filed a suit claiming that he is owner in possession of land situated on the main road going from Sri Muktsar Sahib to Kapurthala measuring 5 kanals and 2 marlas comprised in Rect. No.59 Khasra No.18/1 (5-2). Defendant No.1 is owner of the land located behind the land of the plaintiff. In the written statement, the ownership of the plaintiff on the land in dispute was not disputed. However, it was claimed by the defendant that the plaintiff has encroached upon the land owned by the defendants, therefore, a counter claim for possession was sought. Both the Courts below after examining the evidence have decreed the suit for injunction filed by the plaintiff whereas counter claim filed by the defendant-appellant has been dismissed.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below and the records.

It will be noted that the plaintiff filed the present suit on 27.08.2012. Before the institution of the suit, got the property demarcated on two different occasions. On examination of the reports of the demarcation, the Courts have come to a conclusion that both these reports do not depict the specific area alleged to have been encroached upon by the plaintiff-respondent. On careful examination of the report Ex.P-2, it has been found that there is no encroachment on any part of the land owned by the defendant-appellant. It is not established that the land of defendant-appellant is deficient than his entitlement.

Learned counsel for the appellant contended that the aforesaid demarcation was carried out when the appellant was not present. However, it is apparent that the demarcation Ex.P-2 was carried out on the request of

the defendant-appellant.

Learned counsel for the appellant has submitted that the Courts below have misread the report of the demarcations. He submitted particularly while drawing attention of the Court to report Ex.DW-2/C dated 03.05.2007 that the plaintiff has straightened his plot so as to make a rectangular and therefore, encroached upon certain portion of the land comprised in Khasra No.18/2. However, on being pointed out, he admitted that the plaintiff-respondent has also left equivalent portion of the land in favour of the defendant-appellant which abuts his land.

Learned counsel for the appellant further submitted that in the previous report i.e. dated 03.05.2007, it has been reported that the wall has been constructed on Khasra No.18/2. On careful perusal of the aforesaid report, it is apparent that no doubt, it has been reported that the wall has been constructed on Khasra No.18/2, however, perusal of the lay-out plan attached with the report, it is apparent that the land comprised in Khasra No.18/1 and 18/2 abuts each other and it is nowhere found that because of construction of the wall, area in possession of the defendant-appellant stands reduced.

In view of the aforesaid discussion, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Both the appeals are dismissed.

22.10.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No