

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

RSA No.1427 of 2017(O&M)

Date of Decision:16.10.2018

Satyapal and others

.....Appellants

Vs.

Nanak Chand Jain

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Lokesh Sinhal, Advocate,
for the appellants.

AMOL RATTAN SINGH, J. (Oral)

By this second appeal the appellants challenge the orders of the learned Courts below, i.e. the Additional Civil Judge (Senior Division), Rewari, and the Additional District Judge, Rewari, by the first of which the suit of the respondent/plaintiff was decreed in his favour and the first appeal filed by the present appellants was dismissed by the latter Court.

Mr.Sinhal, learned counsel for the appellants, on query could not deny that actually the entire dispute is with regard to the encroachment alleged by the respondent/plaintiff to have been made upon some part of the land by the appellants/defendants.

He also could not deny that a local commissioner was appointed, who conducted a demarcation on the directions of the trial Court, with the respondent/plaintiff also relying upon another demarcation report Ex.PW6/1, as also the subsequent report as ordered by the Court being Ex.PW3/4.

A perusal of the judgments of the learned Courts below shows that as a matter of fact the appellants, despite notice issued to them, did not participate in the demarcation process in either case, with infact objections

also having been filed by them prior to the order of the trial Court directing such demarcation (leading to the report Ex.PW3/4), with those objections dismissed.

Mr.Sinhal has further submitted that admittedly the *pucca* demarcation points could not be determined on the spot, construction having taken to place on what was formerly agricultural land, and therefore, the demarcation was not carried out in terms of the rules and orders framed by this Court, which stipulate that any demarcation should be carried out in reference to 3 such *pucca* points.

He, therefore, submits that demarcation should have been carried out by way of measurement with a “Total Station Machine (TSM)”, which employs laser technology to do the needful.

Whereas, had this objection been raised before the Courts below, learned counsel may have had a point, however, in view of the fact that the appellants chose not to participate in the demarcation process either prior to the suit being filed (leading to the report Ex.PW6/1), or thereafter, and did not raise any such objection even at the stage when the demarcation was ordered by the trial Court, I see no reason to order fresh demarcation at this stage of second appeal, which would only be prolonging the litigation unnecessarily, for a very long period.

Consequently, finding no merit in this appeal, it is dismissed in *limine*.

(AMOL RATTAN SINGH)
JUDGE

October 16, 2018.

dharamvir/dinesh

Whether speaking/reasoned : YES
Whether Reportable : YES