

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

**RSA-1880-2017 (O&M)
Date of decision:24.07.2018**

Tara Singh

... Appellant

Versus

Gurnam Singh

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Vikram Anand, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J.

Plaintiffs-Gurnam Singh etc. filed a suit for possession of land measuring 2 kanals 4 marlas as detailed in the head note of the plaint. It was their case that they are owners and were in possession of the suit property. The defendant-Tara Singh taking advantage of their business, illegally encroached upon the suit property. A request was made to vacate the encroached portion. Even an application was made to the Revenue Authorities for demarcation of the suit property and as per demarcation report, defendant-Tara Singh was shown to have encroached upon land measuring 2 kanals 4 marlas. Since defendant-Tara Singh refused to vacate the suit property, suit was instituted.

Suit was contested by Tara Singh-defendant setting up a case of denial. It was stated that between the land in dispute and the land of the defendant, there was land of Surjit Singh and Devinder Sood. It was further stated that no notice had been given to the defendant regarding visit of the Local Commissioner for purposes of demarcation.

Trial Court vide judgment and decree dated 09.03.2016 decreed the suit of the plaintiffs and the defendant-Tara Singh was directed to hand over the vacant and peaceful possession of the suit property. Civil appeal preferred by the defendant-Tara Singh has been dismissed by the lower Appellate Court vide judgment dated 26.10.2016.

Resultantly, the defendant/appellant, Tara Singh is in second appeal before this Court.

Counsel representing the appellant has argued that the Courts below have proceeded on conjectures and surmises and there has been a misreading and mis-appreciation of evidence. It is urged that the appellant had led sufficient evidence to prove that he had never occupied any portion of land owned by the plaintiffs/respondents. Further argued that no demarcation was conducted in the presence of the appellant and as such, the demarcation report, if any, would not have any binding effect.

Having heard counsel for the appellant at length and having perused the pleadings on record as also the records of the case, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

To prove that the defendant/appellant, Tara Singh had encroached upon the suit property, the respondents herein had examined PW1, Gyan Chand, Kanungo, who had conducted the demarcation of the suit property. He clearly stated that he had visited the spot and was assisted by the Halqa Patwari, who was having the revenue records with him. He duly proved on record the demarcation report dated 04.11.2008, Ex.PW2 as also the site plan Ex.P3. As per demarcation report, the appellant herein had encroached upon 2 kanals 4 marlas of land.

It has gone uncontroverted that the appellant herein had filed a suit against the present plaintiffs/respondents for permanent injunction with regard to the same very suit property and which was dismissed by the trial Court on 17.05.2011, Ex.P5. It is conceded that no appeal had been filed against the decision dated 17.05.2011 passed by the Civil Judge (Senior Division), Kapurthala. Perusal of the judgment would show that an application had been moved by the defendants therein and the present respondents for seeking demarcation of their land. A Local Commissioner was appointed to demarcate the land and whereupon Tara Singh had obstructed the demarcation process and had manhandled the revenue staff and did not permit them to demarcate the suit land. It is when the Tehsildar called for an explanation and Tara Singh suffered a statement that he would not cause any obstruction. Thereafter, on 04.11.2008, a demarcation report was got conducted and in which Tara Singh (present appellant) was found in illegal and unauthorized possession of 2 kanals and 4 marlas of land.

This Court as such does not find any basis that would warrant interference in the matter.

Another relevant aspect that has weighed with this Court not to interfere is that counsel on a specific query having been put, conceded that no objection at any point of time had been made by Tara Singh, appellant to the demarcation report dated 04.11.2008 Ex.P2 and whereunder he had been found to have encroached upon 2 kanals 4 marlas of land of the plaintiffs/respondents.

No infirmity as such is found in the judgments passed by the

Courts below.

Appeal does not raise any question of law and is dismissed.

24.07.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| 1. | Whether speaking/reasoned? | Yes/No |
| 2. | Whether Reportable? | Yes/No |