

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.229 of 2017 (O&M)

Date of Decision: November 20, 2018

Jagat Singh & another

...Appellants

Versus

Shri Om & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Kulvir Narwal, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants had not been successful in defending the suit for possession and permanent injunction filed by the respondent-plaintiff alleging some encroachment of the plot measuring 3 marlas purchased vide sale deed dated 30.07.2012. Reliance was laid to the demarcation report conducted by Jagdev Singh, Office Kanungo.

Appellant-defendants opposed the aforementioned suit by denying the alleged encroachment and alleged that they had purchased the area measuring 3 marlas adjacent to the property of the plaintiff vide sale deed dated 04.02.2013.

The trial court, on the basis of the evidence, decreed the suit. The appellant No.1 Jagat Singh was not successful before the Lower Appellate Court.

Mr. Kulvir Narwal, learned counsel appearing on behalf of the appellant-defendants submitted that the demarcation was got conducted at the back of the appellant-defendants. It was preceding to filing of the suit.

No notice was ever issued. That report could not have been looked into.

Even the points for measurement were not according to the High Court Rules and Orders, therefore, the plaintiff failed to discharge the onus. There is no dispute to the ownership of the plaintiff, but the alleged encroachment of 2 feet on the north and 1 feet on the east has not been proved.

I am afraid, the aforementioned argument is not sustainable as the defendants had an opportunity to rebut the report by taking assistance of the expert during the pendency of the suit. Despite extensive cross-examination, PW-5 had been consistent. Once the ownership of the plaintiff had not been denied and the encroachment of 2 feet on the north side and 1 feet on the east side had been found to be correct, the defendants can not be permitted to remain in unauthorised possession of the property which is not owned by them.

For the reasons mentioned above, no ground for interference in the concurrent findings of fact and law is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 20, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No