

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5518 of 2014 (O&M)

Reserved on 16.5.2018

Date of decision: 1.6.2018

Dalbir Singh

..... Appellant

Versus

Ram Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Jaivir Yadav, Advocate, for the appellant.

Mr. Ashok Gautam, Advocate, for the respondent.

GURVINDER SINGH GILL J.

1. Appellant-defendant Dalbir Singh has filed this appeal challenging judgment dated 18.7.2014 passed by Additional District Judge, Kaithal whereby decretal of suit filed by respondent-plaintiff for possession of suit property has been affirmed.
2. The case set up by the respondent-plaintiff is that appellant-defendant had encroached upon 15 square yards out of Khasra No.608 and 10 square yards out of Khasra No.609 owned by the respondent-plaintiff situated in Village Teontha, Tehsil and District Kaithal. The respondent-plaintiff averred that the adjacent land comprised in Khasra No.607 and 610 is owned by the appellant-defendant and that earlier the respondent-plaintiff had filed a suit for injunction and wherein upon demarcation conducted by the order of the Court, he came to know that appellant-defendant had encroached upon his land and thereafter he withdrew the said injunction suit and filed a suit for possession.

The appellant defendant contested the suit and filed written statement denying all the material averments made in the plaint.

3. The parties was put to proof on the following issues :-

“1. Whether the plaintiff is owner of Baras falling in Khasra Nos. 608 and 609 ? OPP.

2. Whether the defendant encroached upon the red portion of the said Baras ? OPP.

3. Whether the plaintiff is entitled to a decree for possession of the said portion ?OPP.

4. Whether the suit of the plaintiff is not maintainable? OPD

4. Relief.”

4. The respondent-plaintiff, in order to prove his case, himself stepped into the witness box as PW-1. He examined PW-2 Ram Chander and PW-3 Ranbir Singh whereas the appellant-defendant in order to rebut the case of plaintiff himself stepped into the witness box as DW-1 and examined DW-2 Randhir Singh.

5. The learned lower Court, upon consideration of evidence on record, returned its findings on issue nos. 1 to 3 in favour of the respondent-plaintiff holding therein that the appellant-defendant has encroached upon land belonging to the respondent-plaintiff and thus decreed the suit for possession in respect of the encroached area. The appellant-defendant challenged the said judgment and decree dated 9.2.2012 by way of filing an appeal which was dismissed by the learned Additional District Judge, Kaithal vide judgment dated 18.7.2014, which has been challenged by way of filing the present appeal.

6. The learned counsel for the appellant-defendant, while assailing the impugned judgment has submitted that the learned Courts below fell in error in relying upon demarcation report dated 20.9.2006 Ex.P-4 whereas the said report was neither proved nor had been conducted pursuant to any order passed by this Court. The learned counsel presses into service a judgment of Karnataka High Court reported as 1996(1) CivCC 159 Vokkaligara Sannappa vs. Vokkaligara Annaiah and Anr. to contend that a demarcation report submitted in an earlier case is inadmissible in a subsequent litigation unless the same is duly proved and established.
7. On the other hand, the learned counsel for the respondent-plaintiff has submitted that the demarcation conducted in the earlier litigation had been conducted pursuant to an order passed by the Court and that since the earlier litigation was amongst the same parties and that since no objection had ever been raised as regards admissibility of the said demarcation report at any stage during the proceeding of the civil suit, therefore, no such objection as regards admissibility of demarcation report should be entertained at this stage.
8. I have considered the rival submissions addressed before this Court.
9. It is not in dispute that the demarcation report Ex.P-4, was prepared pursuant to demarcation conducted on directions of the Court in an earlier civil Suit and not in the present suit. However, it is also not in dispute that even in the earlier suit, the parties to the *lis* were same. It is well settled that report of the Local Commissioner appointed by a Court to inspect a property shall form part of the record and it is not necessary that such reports should be marked or exhibited and it is not even necessary that the Commissioner under all

circumstances should be examined but in case any of the parties does not accept the correctness of report of the Commissioner then it is open to such party to file objections against the report in question and may also be given an opportunity to examine the Commissioner.

10. It is, however, noteworthy that in the present case, the report Ex.P-4 was not made or submitted pursuant to any order of appointment of Local Commissioner or pursuant to any direction given during the proceeding of the present case. The demarcation Ex.P-4 would, thus, be like any other document, which would be required to be proved by the party relying upon it as demarcation report is not in the nature of public record in terms of Section 35 of the Indian Evidence Act so as to be *per se* admissible. Even, if no objection was ever raised by any of the parties against exhibiting of document Ex.P-4, still the mere fact that it was exhibited would not lead to a conclusion that the document in question has to be relied upon. The document in question was required to be established by the mode and procedure prescribed for proving the documents i.e. by way of examining the author of the document in question. In the present case, the author of the document i.e. the person who prepared the demarcation report has not been examined so as to afford the opposite party an opportunity to cross-examine him as well. The same not having been done, it is certainly not safe to rely upon such demarcation report even though the same have been produced in some other litigation amongst the same parties without any objection.
11. I further find that in the present case, the appellant-defendant at some stage had moved an application for appointment of Local Commissioner and the learned Additional Sessions Judge, Kaithal vide order dated 24.10.2007 had

allowed the application and had appointed Tehsildar, Pundri as a Local Commissioner who was directed to visit the spot and to report about the existing actual and factual position in respect of the land bearing Khasra No. 607, 607, 609 and 610 after demarcating the same. The fee of the Local Commissioner was assessed as ₹ 1,000/- which was to be paid by the appellant-defendant. However, it appears that the appellant-defendant did not pay the fee of the Local Commissioner, as would be evident from order dated 17.12.2009. Consequently, no report of the Local Commissioner was received in the Court.

12. The entire case of the respondent-plaintiff is based on the demarcation report Ex.P-4, which as per discussion made above, cannot be held to be admissible and cannot be relied upon. Consequently, the findings of the learned lower Court on issues no. 1 to 3, which are based on the demarcation report Ex.P-4, cannot sustain and are hereby reversed. As a result thereof, the appeal merits acceptance and is hereby accepted. The impugned judgments of the lower Courts are hereby set aside and the suit filed by the respondent-plaintiff consequently stands dismissed.

13. The appeal stands accepted in the above mentioned terms.

(Gurvinder Singh Gill)
Judge

1.6.2018
Kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No