

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

RSA No.4042 of 2017

Date of Decision:16.02.2018

Diwan Chand through LRs and others

...Appellants

Versus

Gurbax Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Sodhi, Advocate for the appellants.
Mr.G.S.Nagra, Advocate for respondents No.4 to 11.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, while decreeing the suit filed by the plaintiffs for possession by way of removal of encroachment over an area measuring 13 marlas.

Defendants contested the suit and pleaded that they are in possession of the property since the year 1947 as owners and in the alternate they have become owners by way of adverse possession.

The learned trial court after appreciating the evidence available on the file, decreed the suit. The first appeal filed by the defendants was allowed after reappreciating the evidence available on the file. An appeal bearing Regular Second Appeal No.3014 of 1987 came to be filed in this Court. The aforesaid appeal was allowed vide order dated 19.12.2013 and the case was remanded back to the first appellate court to once again appoint a revenue official to carry out the demarcation.

Pursuant to the remand order, the first appellate court appointed Tehsildar as Local Commissioner. Tehsildar, Gurdaspur as Local Commissioner initially reported that in the absence of complete original record, demarcation is not possible. However, thereafter he carried out the demarcation once the record was made available. The local commissioner

appointed by the court has submitted a report dated 22.11.2016, reporting to the court that the defendants-appellants have encroached upon 13 marlas of land.

On the basis of the aforesaid report and after reappreciating the evidence, the learned first appellate court has affirmed the finding of the learned trial court and dismissed the appeal filed by the defendants-appellants.

I have heard the learned counsel for the parties at length and with their able assistance gone through the impugned judgments passed by the courts below.

Learned counsel for the appellants has vehemently argued that the local commissioner did not carry out the demarcation in accordance with the procedure laid down. He has further submitted that the report of the local commissioner has not been proved on file. He has next submitted that the defendants are in possession since 1947 and therefore, their adverse possession has matured into full ownership by prescription of time.

On the other hand, learned counsel for the respondents has defended the judgment. He has submitted that no objections to the report of local commissioner were filed before the first appellate court. He has further submitted that the report of the local commissioner is part of the court record. In the considered opinion of the Court, the report of a local commissioner appointed by the court to carry out the local investigation is part of court record and need no formal proof.

As regards the argument of the learned counsel for the appellants with regard the report of local commissioner, it is sufficient to

observe that the report of local commissioner is part of the record. Under Order 26 Rule 9 of the Code of Civil Procedure, court appoints a local commissioner to carry out local investigation. The court in fact delegates its powers and requests for a report so that the case can be adjudicated upon in a proper manner.

Second argument of the learned counsel for the appellants that the local commissioner did not carry out the demarcation in a proper manner, is to be noticed and rejected. Tehsildar himself was appointed as a local commissioner to visit the spot and carry out the demarcation. Tehsildar was accompanied by Kanungo as well as Patwari of the area. Report of the local commissioner shows that *bhurjis* were fixed for carrying out the demarcation. After determining *pucca* points, the local commissioner carried out the demarcation. Such being the position, the report of local commissioner cannot be said to be not in accordance with law.

Last argument of the learned counsel for the appellants is that the appellants have become owner by way of adverse possession. In this regard, both the courts have examined this issue in detail and have recorded a finding of fact that the defendants have failed to plead and prove that from which date their possession became adverse, open and hostile to the owners. Such being the position, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

Dismissed.

16.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No