

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

RSA No.4502 of 2018 (O&M)

Date of decision: 02.08.2018

Jaspal Singh and others

..... Appellants

Versus

Mangu Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Siddharth Gupta, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for possession of land measuring 1 kanal and 3 marlas, comprised in Khewat No.170.

Plaintiff filed a suit claiming that he is one of the co-owner of land comprised in Khewat No.170 and on demarcation of the land by Kanungo of the area (revenue official) on 20.02.2015, it was found that the defendants have encroached upon 1 kanal and 3 marlas. The defendants No.3 to 5 contested the suit and pleaded that the demarcation carried out is not correct. Learned trial Court found that defendants No.2 to 4 were present at the time of demarcation but they have not been examined in evidence. In order to prove the demarcation, Harbans Singh, Kanungo was examined as PW-1. His report Ex.P-2 was exhibited. Only defendant No.5 appeared in the witness-box. On appreciation of evidence, learned trial

Court decreed the suit after relying upon the demarcation carried out on 20.02.2015. Before the learned First Appellate Court, all the defendants although they had not contested the suit, filed the first appeal. During the pendency of the appeal, the application under Order 41 Rule 27 was filed for permission to produce on file a demarcation carried out on 09.06.2015. Learned First Appellate Court dismissed the application on the ground that these facts were in the knowledge of the defendants and the demarcation report which is sought to be produced by way of additional evidence, is even before the institution of the suit.

Learned counsel for the appellants has submitted that the order passed by the Court dismissing the application for additional evidence is erroneous. He submitted that in order to do justice, the Court ought to have permitted the defendants-appellants to produce the demarcation report.

This Court has considered the submission, however, finds no substance therein. The application for permission to lead additional evidence has rightly been dismissed by the Court as the demarcation was got carried out by the defendants themselves. Once the property was demarcated, it was the duty of the defendants to produce the same before the trial Court. The suit remained pending for one and half year. However, no effort was made. Still further, the aforesaid demarcation report is only with respect to the land comprised in Khewat No.164 whereas the present dispute is with regard to the land comprised in Khewat No.170.

Still further, as noticed earlier, only defendants No.3 to 5 filed the written statement and the remaining did not choose to contest. Defendants No.2 and 4 were not produced before the Court although they were present when the demarcation dated 20.02.2015 was carried out. It is

apparent that the defendants had been colluding amongst themselves and appearing before the Court at their convenience.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

02.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No