

RSA-5446-2017 (O&M)

143

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

RSA-5446-2017 (O&M)

Date of decision : 27.11.2018

Shankar and others

... Appellants

Versus

Sheonath (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Radhey Shyam Sharma, Advocate
for the appellants.

AMIT RAWAL, J.

The appellants-defendants are in the present regular second appeal against the concurrent findings of fact, whereby the suit of the respondents-plaintiffs for possession in respect of land Khewat No.291, Khatuni No.363 of Khasra No.192 min (1-7), situated at Village Dholu, Tehsil and District Fatehabad, has been decreed by the trial Court and affirmed by the lower Appellate Court.

The plaintiffs instituted the suit on 15.06.2011 on the basis of the demarcation report dated 17.11.2010, conducted by the Kanungo, where it was found that the defendants were in illegal possession of the land measuring 1 kanal 7 marlas.

The defendants opposed the suit by alleging that they were in possession of the house for almost one hundred and twenty years. Their grand father constructed 'kacha' homes which were converted into 'pucca' by

RSA-5446-2017 (O&M)

their father and the demarcation report was stated to be illegal and in collusion with Naib Tehsildar, Bhuna and Harphool Singh, retired ACO, with an ulterior motive.

The plaintiff in support of the aforementioned averments, examined five witnesses and brought on record the documents Ex.P1 to Ex.P15, whereas the defendants examined two witnesses and placed on record the documents Ex.D1 to Ex.D6.

Learned counsel appearing on behalf of the appellants-defendants submitted that the judgments and decrees of the Courts below are result of misreading and non-reading of the evidence, as the lower Appellate Court should have applied the independent mind while dealing with the appeal preferred by the appellants-defendants. An application (Annexure A-1) was submitted by the defendant to the Department for demarcation of Khasra No.191 and report was procured in collusion with the officers, for, it is evident that the same was not procured as per the instruction issued by the Financial Commissioner and High Court Rules and Orders. The jamabandi for the year 1959-60, onwards Ex.D1 to D6 established the construction over the khasra number in dispute, but for the reasons best known, has been ignored. An application bearing CM No.14484-C of 2017, for amendment of the written statement has been filed claiming the relief of adverse possession. It was also alleged that the report was not written by Kanungo and by some other persons.

I am afraid the aforementioned argument is not sustainable as from the demarcation report, it revealed that Shankar, Manohar and Hanuman had occupied the land 3 marlas, 2 marals and 6 marlas, respectively, whereas Ram Kumar and Banwari, constructed the house on

RSA-5446-2017 (O&M)

the land measuring 3 kanals 2 marlas. PW2, Harphool Singh, Kanungo, stated that on 16.11.2010, his finger got injured and due to this reason, the demarcation report was in the handwriting of two persons. The factum of demarcation report conducted by the retired ACOs, namely, Bhuna and Harphool Singh, was not denied in the evidence of DW1 and DW2, in such circumstances, the defendants cannot be permitted to take the plea the report to be incorrect. It is too late in a day to allow the amendment of the written statement for incorporating the plea of adverse possession as no evidence had been placed on record, thus, such plea would be beyond the pleadings.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Sharma, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed on merits as well as on account of delay of 119 days in filing.

27.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**