

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

RSA No.5932 of 2017(O&M)

Date of Decision: 22.05.2018

Swaran Singh(since deceased) through his LR ... Appellant

Versus

Rattan Singh & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Munish Gupta, Advocate,
for the appellant.

RAMENDRA JAIN, J.(Oral)

Through this regular second appeal, legal heir of defendant No.1 has laid challenge to the judgment and decree of the First Appellate Court dated 04.07.2017 reversing the judgment and decree of the trial Court dated 23.03.2015, whereby the suit of contesting respondent No.1-plaintiff was dismissed.

In nutshell, respondent No.1-plaintiff Rattan Singh filed suit for possession of a vacant plot, part and parcel of Khasra No.68/3, Khewat No.117, Khatauni No.138, Hadbast No.29, as per jamabandi for the year 2005-2006, situated in Village Bhullewal Rathan, P.S. Mahilpur, Tehsil Garhshankar, District Hoshiarpur, marked by letters 'A B C D E F' in the site plan attached with the plaint, on the ground that while illegally encroaching upon land of Custodian Department, the father and brother Amrik Singh of the appellant constructed their houses adjacent to Khasra No.68/3 also encroaching some part of khasra No.68/3 owned by him.

After holding trial, trial Court, vide judgment and decree dated

23.03.2015 dismissed the suit.

Being aggrieved, contesting respondent No.1 Rattan Singh approached the First Appellate Court, who vide judgment and decree dated 04.07.2017 reversing the judgment and decree of the trial Court, decreed the suit for possession qua area measuring 9X2 ½ karama as part of Khasra No.68/3.

Heard.

According to learned counsel for the appellant, the respondent-plaintiff Rattan Singh could not prove any encroachment over Khasra No.68/3 of the appellant. For that reason, his suit was rightly dismissed by the trial Court considering the Local Commissioner's report, on the basis of which the suit was filed and deposition of PW-3 Jeet Ram, who categorically admitting in his cross-examination that he demarcated the disputed area by taking imaginary point as there was no pacca point or consolidation in the village. Similarly, respondent-plaintiff also took contradictory stand inasmuch as at one point of time he stated that house of father and brother of the appellant was in *lal lakeer*, whereas at another point of time, he testified that there was some encroachment over his land comprising Khasra No.68/3.

The crux of the matter revolves around the dispute as to whether any illegal encroachment has been done by father and brother Amrik Singh of the appellant over Khasra No.68/3 owned by the respondent-plaintiff, inasmuch as, his title is not disputed over the said khasra number.

To cut short the controversy, it is desirable to direct the Executing Court and is directed so, that before delivery of possession of part of khasra No.68/3 in compliance of the judgment and decree of the First Appellate Court, it would ensure, by all means, that the possession of the appellant or his brother Amrik Singh is not disturbed from any other portion

or area except Khasra No.68/3. In other words, the Executing Court would satisfy itself before issuance of any warrant of possession against the appellant by calling a demarcation report or appointing Local Commissioner, who shall be assisted by revenue official of impeccable antecedents, to ascertain the factual aspect of the case and as to whether there is any encroachment of the appellant over Khasra No.68/3.

With these observations and directions, the appeal stands disposed of.

22.05.2018
monika

(RAMENDRA JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>