

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

**RSA No.6290 of 2017 (O&M)
Date of Decision: July 04, 2018**

Sukhbir and others

---Appellants

Versus

Karambir and another

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

**Present: Mr. Namit Sharma, Advocate
for the appellants.**

HARINDER SINGH SIDHU, J.

The defendants are in appeal against the judgment of the Courts below, whereby, the suit of the plaintiffs-respondents has been partly decreed.

The plaintiffs filed a suit for mandatory injunction for directing the defendants-appellants to remove the encroachment alleged to be made by them in the street depicted in red colour in the plaint. Plaintiffs also sought consequential relief of permanent injunction for restraining the defendants from raising any further construction and encroachment over the remaining portion of the street.

The case of the plaintiffs was that plaintiff No.1 had a share to the extent of 0 kanal 4 marla approximately, plaintiff No.2 had a share to the extent of 0 kanal 7½ marla in Gair Mumkin Bara/Ghair measuring 1 kanal 10 marlas comprised in khewat No.16 khatoni No.43 khasra No.320(1-10) total measuring 283 kanals 0 marla situated in village Agondh, District Karnal. It was pleaded that the plaintiffs had constructed two rooms and two stores in the said *bara* and were using the same for tethering their cattle.

There was an eight feet wide cemented street in front of the *bara* and this

street was the only way for the plaintiffs to approach the *bara* in question. Defendant No.1 had a plot on the eastern side of the said street. It was alleged that the defendants had encroached upon the street by raising a wall of 9 inches upto the height of 2' 7". The said encroachment caused hindrance in the outgress and ingress of the plaintiffs to their *bara*.

The defendants in their written statement admitted the share of the plaintiffs in the Gair Mumkin Bara. They, however, disputed the boundaries of the *bara* as given in the plaint. It was denied that there was an 8 ft. wide cemented street in front of the *bara*. They stated that a Gair Mumkin Bara measuring 1K 10 M was jointly owned by the fathers of plaintiff No.1 and defendant No.2. The said *bara* was equally divided between the father of plaintiff No.1 and father of defendants No.1 and 2. The plaintiffs were owners of about 11-1/2 Marlas in the said 15 marlas. Defendant No.1 and 2 were owners in equal share in the other 15 Marlas of the land of the Gair Mumkin Bara. A common wall had been constructed several years ago when the parties had good relations. Now, the plaintiffs were wrongly objecting to the construction of 9 inches wall by the defendants. The defendants stated that they were always ready to get the suit property demarcated to have report regarding the actual and factual position existing at the spot.

The parties led evidence in accordance with their claim.

The learned Trial Court concluded that from the evidence of the parties, it was clear that a street existed between the land of the plaintiffs and defendants. However, no definite opinion could be expressed regarding its exact width. To determine the correct position, a Local Commissioner was appointed. The report of the Local Commissioner revealed that the disputed street had been constructed on the share of the plaintiffs but 1.5 inch of the street was over the portion of the defendants. The defendants on the other

hand, had constructed their wall by encroaching 3 inch of the share of the plaintiff in the street. Both the parties admitted the report of the Local Commissioner which was prepared in their presence. No objection thereto was filed. Both the parties admitted that the width of their plots was same and the street was left by the plaintiff's only from their share.

Based upon the report of the Local Commissioner, learned Trial Court concluded that the width of the total plot at the point of iron gate of the plaintiffs was 67.5 ft. and at the point of the main street also it was 67.5ft. Therefore, the central point of the width was 33.85 ft. From the Local Commissioner's report, it was clear that at the point of iron gate of the plaintiffs' bara, the width of the plaintiffs' plot including the street was just 33.5'. This indicated that the defendants while constructing the disputed wall had encroached 3 inch land of the plaintiffs in the street. In the same manner, at the point of the main street, taking the central point of the total width of the whole plot, the width of the total plot including the street was 33'10". This indicated that the plaintiffs had encroached 1.5" land of the defendants while constructing the street from the side of main street to the point of end of disputed wall. Accordingly, the suit of the plaintiffs was partly decreed to the extent that the defendants were directed to remove the encroachment made by them in the street and remove the wall to the extent of 3" from the side of the plaintiffs. The decree was made conditional on the plaintiffs leaving 1.5" of the street which had been constructed by them by encroaching upon the land of the defendants.

The learned lower Appellate Court affirmed the findings of learned trial court and dismissed the appeal of the defendants.

Learned counsel for the appellants argued that the learned courts below have erred on placing reliance on the report of the Local

Smt.Bhushanamma, 2000(3) RCR(Civil) 89, Vinod Kumar vs. Gram Panchayat of Village Kheri Naru and others, 2008(1) RCR(Civil) 697 and Ashutosh Dubey and another vs. Tilak Grih Nirmal Sahkari Samiti and another, 2004(4) RCR(Civil) 79.

The above judgments are of no help to the appellants. They reiterate the well settled position that the Local Commissioner cannot be appointed to determine the question of possession. It is for the parties to lead evidence to prove their possession. In the present case, the Local Commissioner was not appointed to collect evidence for any of the parties. He was appointed only to demarcate the property and give report regarding actual and factual position at the spot as from the evidence of the parties no definite opinion could be formed regarding the width of the street between the plots of the plaintiffs and defendants. The demarcation was conducted in the presence of the parties. No objection was filed by them against the report. Thus, the Courts below have committed no error in relying upon the demarcation report of the Local Commissioner.

Concurrent findings of fact have been recorded by the Courts below.

No question of law arises for determination in this appeal.

Accordingly, there is no merit in the appeal and the same is dismissed.

July 04, 2018

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(HARINDER SINGH SIDHU)
JUDGE