

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.715 of 2017 (O&M)

Date of Decision: November 02, 2018

Dharam Singh (deceased) through L.Rs

...Appellants

Versus

Pirithi Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Harkesh Manuja, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.1540-C of 2017

Prayer in the application is for permission to file the appeal on behalf of deceased Dharam Singh. The application is supported by an affidavit.

Allowed subject to all just exceptions. The applicant/legal heirs are permitted to file the appeal on behalf of Dharam Singh deceased.

RSA No.715 of 2017

Appellant- defendant No.4 is in Regular Second Appeal against the concurrent findings, whereby in a suit for mandatory injunction, he has been directed to remove the encroachment from Chaser No.121 and 287 by demolishing the same with a further restraint of raising construction on the said khasra numbers.

Plaintiffs instituted the suit on the ground that he along with proforma defendant Nos.13 to 17 had constructed houses being owners in

possession of Khasra No.269 (1-9) comprised in Khewat No.479/385, Khatoni No.582. Defendant No.4 constructed a house over the Bara comprising in Khasra No.266, but while raising the construction, made unauthorized construction over Khasra Nos.121, i.e., 9 feet towards northern side, 9 feet towards eastern side and 6 feet towards southern side over Khasra No.287. Khasra Nos.121 and 287 are Gair Mumkin Gali/Rasta Sare-Aam. Since no heed was paid to the requests of the plaintiffs, they instituted the aforementioned suit.

Defendant No.4 opposed the suit by admitting the construction over Khasra No.266, but denied it to be unauthorized over Khasra No.121 and 287.

Both the parties led extensive evidence. Plaintiffs examined as many as six witnesses, whereas the defendants examined two witnesses and brought on record documentary evidence.

The trial Court, on the preponderance of the evidence, decreed the suit and the appeal laid before the Lower Appellate Court has been dismissed.

Mr. Harkesh Manuja, learned counsel appearing on behalf of appellant-defendant No.4 submitted that both the courts below while decreeing the suit solely relied upon the demarcation report dated 22.04.2009 Ex.P4 and Ex.PW5/A, which has not been conducted as per the law, i.e., High Court Rules and Orders. The demarcation, in fact, as per the provisions of law was required to be carried out from three different pucca points. It was done prior to the filing of the suit without serving notice to defendant No.4. As per order of the Tehsildar Ex.P3, demarcation was required to be conducted for ten khasra numbers but had been done only of

two khasra numbers. He further contended that as per the assertion in the plaint, Rasta being Gair Mumkin would vest in the Gram Panchayat. In such circumstances, suit for mandatory injunction was not maintainable.

I have heard the learned counsel for the appellant-defendant No.4, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Manuja.

Demarcation report Ex.P4 revealed that encroachment had been done by appellant-defendant No.4. Retired Kanungo has also appeared as PW-4 and reiterated averments in the affidavit. Despite extensive cross-examination, nothing contrary surfaced, rather the pith and substance of the cross-examination was that there was unauthorised construction. No contrary evidence has been placed on record to establish construction to be legal.

I cannot remain unmindful of the fact that the defendant, who was present at the time of the demarcation, did not volunteer to sign the report, thus, the plea of ex-parte report is neither here nor there. It is too late in a day to intervene in the application seeking appointment of the Local Commissioner, for, the Gram Panchayat-defendant No.3 candidly admitted the encroachment on the public street by the appellant- defendant No.4. DW-1 Dharam Singh and DW-2 Sada Ram admitted the site plan Ex.P2 to be correct, thus, for all intents and purposes, the encroachment depicted in the site plan Ex.P2 has been proved. Even the appellant feigned ignorance with regard to the boundaries of khasra number 266 and construction of khasra number belonging to him.

In such circumstances, I am of the view that the judgments and decrees of the courts below do not suffer from any illegality or perversity

and can be said to be faulty. No substantial question of law arises for determination. Resultantly the appeal stands dismissed.

November 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No