

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

RSA No. 724 of 2017(O&M)

Date of decision: 26.9.2018

Gurdwara Teja Kalan

.....Appellant

VERSUS

Santokh Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Manaise, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for possession qua plot marked ABCDEF as shown in the site plan annexed with the plaint and detailed in head-note of the plaint comprising khasra No.13R/12/2 situated in village Teja Kalan, Tehsil Batala after removal of structure and malba illegally, raised over it by the respondent/defendant was dismissed by the trial Court vide judgment and decree dated 16.01.2015 and appeal preferred by unsuccessful appellant/plaintiff Gurdwara Teja Kalan Bahitmam Local Committee Gurdwara Teja Kalan through Shiromani Gurdwara Prabandhak Committee was ordered to be dismissed.

The plea of the plaintiff/appellant is that the plaintiff is owner in possession of land measuring 3 kanal 3 marlas bearing khasra No.13R/12/2 situated at village Teja Kalan. The plaintiff took demarcation of the said khasra number and it has transpired that the respondent/defendant has illegally occupied the plot in dispute about two years back which is a part of khasra No.13R/12/2.

The sole submission made by counsel for the appellant is that the respondent/defendant examined Pritam Singh DW-3 and in his cross examination, he has admitted that suit land belongs to the appellant/plaintiff Gurdwara.

Be that as it may, it is undisputed position of the case that plea of the appellant with regard to encroachment of khasra No.13R/12/2 is based upon demarcation report dated 26.11.2007, referred to as dated 20.12.2007 in para 13 of judgment of the trial Court. Counsel for the appellant has not disputed that neither the original demarcation report was produced on record nor the appellant examined the person who conducted demarcation to prove the said report with an opportunity to the contesting respondent to cross examine the witness. Once the appellant has failed to prove demarcation report in accordance with law, it cannot derive any advantage to its contention from the alleged admission by Pritam Singh DW-3. The very fact that the appellant based its suit on the demarcation report but shied away to prove that report in accordance with law, it creates a serious doubt with regard to correctness of averments raised in the plaint. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

SEPTEMBER 26, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no