

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

**RSA No.870 of 2017 (O&M)**

**Date of decision:28.05.2018**

**Rajender Singh**

**... Appellant**

**Vs.**

**Mehtab Singh and others**

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

**Present:- Mr. Vishal Nehra, Advocate  
for the appellant.**

**AMIT RAWAL J. (Oral)**

The appellant-plaintiff has not been successful in proving the averments in the suit claiming possession of the suit property on the premise that respondent-defendants have allegedly encroached upon the area by raising construction on the land belonging to the appellant-plaintiff.

Mr. Vishal Nehra, learned counsel appearing on behalf of the appellant-plaintiff submits that the respondent-defendants disputed the aforementioned claim of the plaintiff by raising the numerous objections. Even report of Local Commissioner as averred in the plaint was denied. The plaintiff in order to prove the alleged encroachment examined PW2-Ajit Singh Office Kanungo Sampla, who proved the demarcation memo Ex.PW-2/A and attendance sheet Ex.PW-2/B. On the other hand, defendants examined only three witnesses and closed the evidence. The Court below rejected the demarcation report of Kanungo, for, it was not done in the

presence of the respondent-defendants. He further submits that he had no control over the Kanungo as it was his duty to call other party and for his fault, the appellant-plaintiff should not suffer. Prima facie, the report and construction raised on his part had been proved on record by the plaintiff, thus, there is gross illegality and perversity in the findings rendered by both the Courts below.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Nehra, for, suit was filed on 17.4.2010, whereas, report is of 06.09.2009. If at all, the defendants had disputed the report, it was obligatory upon the plaintiff to prove the same in accordance with law in case demarcation was done in the absence of the defendants so that they would not have any objection. Even otherwise, the Courts below had drawn the adverse inference as the plaintiff miserably failed to prove the encroachment, therefore, rightly non-suited the appellant-plaintiff.

As an upshot of my findings, there is no illegality and perversity in the judgments and decrees rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)  
JUDGE

May 28, 2018  
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No