

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

RSA No.883 of 2018 (O & M)
Date of Decision:21.08.2018

Amrik Singh and another

...Appellants

Versus

M/s Krishna Real Estate Enterprises Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anupam Gupta, Senior Advocate with
Mr. Gurneet Sagoo, Advocate
for the appellants.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Piyush Aggarwal, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below. In short, dispute between the parties is with respect to alleged encroachment made by the defendants-appellants in the land comprised in khasra No.191.

Learned counsel for the defendants-appellants has admitted that on perusal of the various sale deeds through which the defendants-appellants had purchased the property, no part of land comprised in khasra No.191 has been purchased.

Plaintiff before filing the suit moved an application to the Revenue Officials for carrying out demarcation. Initially the Revenue

Official namely 'Kanungo', who was directed to carry out demarcation

issued notices and appellant No.1 applied for postponing the date of demarcation from 30.07.1998 to some other day as he was going out of city regarding his business. This request was accepted. Once again, date of demarcation was fixed as 29.09.1998, however, when notices were again given, a report was submitted that appellant No.2 has gone out of country and will come back in the month of November and, therefore, any date be given for demarcation in the months of November or December. This request made on behalf of appellant No.1 was also acceded and date fixed for demarcation was postponed. Demarcation was carried out on 03.11.1998. The Revenue Official specifically noted in the report that both the appellants were called on the site but neither they were present on 30.07.1998 and 29.09.1998 nor they have come today i.e. on 03.11.1998.

On demarcation, Revenue Official found that the defendants-appellants have encroached upon 13 marlas of land out of khasra No.191, which was purchased by the plaintiff through various registered sale deeds along with the land comprised in various other khasra numbers. Since even after demarcation, possession was not returned/vacated by the defendants-appellants, therefore, a suit for mandatory injunction was filed directing the defendants to deliver possession of the encroached area and in the alternative prayer decree for delivery of possession of the land measuring 13 marlas was also made.

Defendants contested the suit and pleaded that the suit is barred by time. It was pleaded by the defendants that they along with their family members have purchased contiguous pieces of land from 1982 to 1986-87 and have constructed the buildings and are in possession of the property. It

was further pleaded that the plaintiff is already in possession of area in excess than what was purchased by him. The report of the Kanungo and the Revenue Official were alleged to be forged and fabricated.

When appellant No.1/defendant was cross-examined, he admitted that he is in possession of 13 marlas of land out of khasra No.191. Although, he claimed that he has also purchased some part of khasra No.191 vide sale deed in the year 1982. He admitted that he had moved an application for postponing the date of demarcation. He further went on to say that he came to know regarding demarcation. However, he did not think it proper to get the land re-demarcated.

The Revenue Official (Satwinder Singh), who carried out demarcation was examined by the plaintiff as PW-2. Opportunity was given to the defendants-appellants to cross-examine the aforesaid revenue official.

Both the Courts on appreciation of evidence have decreed the suit filed by the plaintiff.

This Court has heard learned senior counsel for the parties at length and with the able assistance of learned counsels, this Court has gone through the judgments passed by the Courts below and the record which has been made part of the paper-book.

Learned senior counsel appearing for the appellants while referring to various judgments of different High Courts has submitted that the report of the revenue official was not admissible in evidence. He submitted that once a State machinery lends its hand to one of the party then it is incumbent on the aforesaid State machinery to ensure that notices are served upon all the owners. While elaborating he submitted that appellant

No.2 is living in United States and, therefore, in the absence of any service of notice, before carrying out demarcation is illegal and, therefore, not admissible in evidence.

Learned counsel for the appellants has further submitted that the suit filed by the plaintiff is not maintainable as the suit has been filed only for relief of possession without seeking declaration of title. Hence, he submitted that no suit for possession would be maintainable.

Learned counsel further while drawing attention of the Court to penultimate paragraph of the judgment passed by the learned First Appellate Court has submitted that since it is the defendants-appellants, who had purchased the property prior in point of time, therefore, the learned First Appellate Court was wrong in calling upon them to go for partition.

On the other hand, learned senior counsel for the respondent has submitted that two notices were sent to the appellants before carrying out demarcation. When first notice was given, appellant No.1 made a request for postponing the date of demarcation as he was to go out of city and the date was changed from 30.07.1998 to 29.09.1998. On 29.09.1998 once again notices were given and Gurpreet Kaur, admittedly related to the defendants-appellants made a report that the date of demarcation be postponed to any date in the month of November or December as Amarjit Singh has gone out of country. The date was once again postponed to 03.11.1998. Hence, he submitted that the demarcation was carried out by the revenue official after proper notice to the defendants. He while drawing attention of the Court to Section 101 of the Punjab Land Revenue Act, 1887 pointed out that although the Act does not provide for any prior notice,

however, keeping in view the well settled principles of natural justice, notices were given to the appellants. He further submitted that once a suit for possession is filed on the basis of title, the declaration of title is implicit and, therefore, there is no force in the submission of learned counsel for the appellants. He further submitted that the property purchased by the plaintiff is entirely in a different khewat/khata and, therefore, the defendants-appellants cannot claim that they are co-owners.

This Court has analyzed the argument of learned counsel for the parties.

As regards the first argument, it is sufficient to note that issuance of notice before carrying out demarcation is proved on file, therefore, this Court refuses to go into the issue whether service of such prior notice is mandatory or not? In the present case, it is proved on file that defendant No.1/appellant did receive a notice and filed an application for postponing the date. This fact has been admitted by defendant No.1 while appearing in the witness-box.

Still further, once the date was postponed to 29.09.1998, once again fresh notice was sent and report was made by Gurpreet Kaur, relative of the defendants-appellants that Amarjit Singh is out of country so postpone the demarcation to any date in the months of November or December. Request was once again acceded to and demarcation was postponed to 03.11.1998.

In these circumstances, this Court does not find any substance in the first argument of learned counsel for the appellants.

Next argument of learned counsel also does not hold any water

as once a suit for mandatory injunction and in alternative possession has been filed claiming that the plaintiff is owner of the property on the basis of five registered sale deeds, the relief of declaration was implicit.

Learned counsel for the appellants frankly admitted that his clients have not purchased any part of khasra No.191, the disputed land. In such circumstances, once the relief of possession has been sought for, the declaration was implicit.

It may be noted here that the defendants-appellants had an opportunity to prove that the report of demarcation is erroneous while leading their own evidence. Suit was filed on 30.10.1999 and it remained pending before the learned trial Court for more than 13 years. Defendants-appellants never made any effort to get the land re-demarcated and never moved an application before the Court requesting for re-demarcation of the land. Once the defendants-appellants have made no attempt, the only evidence left with the Court was demarcation report dated 03.11.1998 carried out by an experienced revenue official.

Learned counsel for the appellants could not point out any error in the manner demarcation was carried out. Report of demarcation is in detail.

Still further, the revenue official has been examined as PW-2 and opportunity has been given to the defendants to cross-examine him. However, no illegality or perversity in the demarcation report. During cross-examination, defendant No.1 went to the extent of asserting that he did not think it proper to get the land re-demarcated.

No doubt, the observations made by the learned First Appellate

Court in penultimate para with regard to the defendants-appellants may seek partition, is erroneous. However, that would not make any difference in the result of the case. While setting aside the observations made by the learned First Appellate Court in penultimate paragraph of the judgment, the judgments and decrees passed by the Courts below are upheld.

In view thereof, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

21.08.2018

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(ANIL KSHETARPAL)

JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No