

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

RSA-2619-1996 (O&M)
Date of decision: 27.08.2019

State of Haryana and another

...Appellants

Versus

Tikan Lal

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Pritam Saini, Addl. A.G. Haryana with
Mr. Harkesh Kumar, AAG, Haryana for the appellants.

Mr. G.S. Gandhi, Advocate for the respondent.

H.S. MADAAN, J. (Oral)

Plaintiff Tikan Lal had brought a suit against State of Haryana and Executive Engineer, PWD (B & R), Sub Division No.1 Rohtak, seeking possession of land having dimensions 46 X 2 i.e. area of 2 karams, out of killa No.11/11/1 and 30 X 2/2 out of killa No.11/9 owned by him, alleging that defendants have encroached upon such area belonging to him while constructing a metalled road and he came to know about such encroachment when he got demarcation conducted by applying to Tehsildar of the area. According to the plaintiff, when the defendants refused to remove the encroachment over the piece of land belonging to him, then, he filed the suit in Civil Court at Rohtak. On notice, the defendants appeared and filed written statement, contesting the suit. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence. After hearing arguments, Sub Judge, 1st

Class Rohtak, vide detailed judgment dated 01.12.1994, dismissed the suit. Feeling aggrieved, the plaintiff approached Ld. District Judge Rohtak, by way of filing an appeal. The appeal was assigned to Addl. District Judge, Rohtak, who vide judgment dated 17.08.1995, accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for possession in respect of land measuring 2 karams, wide existing on the southern side of Ladhot road as shown in the report of demarcation Ex. P1 and defendants were directed to hand over the vacant possession of the encroached portion.

Now, it was turn of the defendants to feel aggrieved and they have approached this Court, by way of filing the present Regular Second Appeal, notice of which was given to the plaintiff/respondent, who has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Basically the dispute between the parties rests upon the fact as to whether a part of the metalled road constructed by appellants/defendants passes through the land belonging to the plaintiff, comprising killa No.11/11/1 and 30 X 2/2 out of killa No.11/9, out of total measuring 5 kanals and 12 marlas, situated in Village Para, Tehsil & District Rohtak. Though, before filing the suit, the plaintiff had got the land demarcated by applying to Tehsildar of the area, who had appointed Harbhagwan, retired Girdawar to carry out the demarcation. Said revenue official had gone to the spot and as claimed by him, had carried out the

demarcation. Thereafter, submitted the report. The report submitted by him which is Ex.P1 on the record is not very detailed. From this report, it cannot be made out that he had carried out the demarcation strictly as per High Court Rules and Orders and instructions of Financial Commissioner, Punjab. Furthermore, admittedly, he had not issued prior notice to the defendants before carrying out the demarcation. Under the circumstances, the report should not have been accepted as such and learned Addl. District Judge, Rohtak fell in error in relying upon such report and decreeing the suit of the plaintiff without any justifiable reason being there.

Under the circumstances, the judgment and decree passed by learned Addl. District Judge, Rohtak are not sustainable. The same are set aside by way of acceptance of appeal and the case is remanded to first Appellate Court for fresh decision. For the purpose of finally resolving the controversy between the parties, it is directed that learned Addl. District Judge, Rohtak shall appoint an experienced revenue official, not below the rank of Tehsildar to visit the spot after giving due notice to both the parties and then he would carry out the demarcation strictly as per High Court Rules and Orders and instructions of Financial Commissioner, Punjab and thereafter, submitting the report in the Court, copies of which be supplied to both the parties. The parties would get a chance to file objections against that report. Thereafter said revenue officer be examined in the Court as a Court witness, giving both the parties an opportunity to cross examine him. Then, after hearing

arguments, the first Appellate Court is to pass fresh judgment. Since the case is quite old, learned Addl. District Judge, Rohtak shall complete the entire exercise within a period of four months from the date of receipt of copy of the order in the Court. The parties through counsel are directed to appear in the first Appellate Court on 13.09.2019. Copy of this order along with record be sent to the Court concerned immediately.

27.08.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No