

CM-11331-C-2019 in/and
RSA-2924-2019 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-11331-C-2019 in/and
RSA-2924-2019 (O&M)

Date of decision: 09.09.2019

Rajinder

..... Appellant

Versus

Mukhtiara and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Rajesh Lamba, Advocate for the appellant.

RAMENDRA JAIN, (ORAL)

CM-11331-C-2019

For the reasons explained in the application which is supported by an affidavit, the same is allowed and date of hearing in the main appeal is preponed from 09.03.2020, to today itself.

RSA-2924-2019 (O&M)

Through this regular second appeal, appellant-defendant No. 1, has laid challenge to judgment and decree of lower Appellate Court dated 01.05.2019, affirming judgment and decree of trial Court dated 20.11.2015, whereby suit for possession of contesting respondents No. 1 and 2-plaintiffs, against appellant and others was decreed.

Briefly, respondents No. 1 and 2 pleading that appellant had encroached upon land measuring 16 Sq. Yards, situated in village Kaloda Kalan, Tehsil Narwana, District Jind, filed a suit for possession. The same

was contested by appellant tooth and nail. Learned trial Court, after holding

trial, decreed the suit with costs, vide judgment and decree dated 20.11.2015, directing the appellant to hand over vacant possession of suit land to contesting respondents No. 1 and 2, within three months.

Being aggrieved, appellant approached lower Appellate Court, but remained un-successful, as his appeal too was dismissed vide impugned judgment and decree dated 01.05.2019.

Learned counsel for the appellant drawing attention of this Court towards report of local commissioner dated 08.10.2015, appointed by the trial Court, urged that the same has illegally been relied upon by both the Courts below, ignoring the fact that in the site plan, local commissioner has not shown specific boundaries of Khasra No. 232 owned by contesting respondents No. 1 and 2. Even, local commissioner was not examined, nor any opportunity was given to the appellant to cross-examine him. Therefore, report of local commissioner could not have been relied upon. Local commissioner in his report dated 27.04.2013 (Ex. P-1) had shown encroachment of the appellant over khasra No. 232 to the extent of 8 Sq. yards only, whereas, in demarcation report Ex. D-2, relied upon by the appellant, contesting respondents No. 1 and 2 were found in encroachment of 8 Sq. Yards of land in khasra No. 231 owned by the appellant. Thus, both the Courts below ignoring all the local commissioners' reports, ought to have appoint another local commissioner to re-demarcate the suit land, which can be appointed, at this stage also for effective adjudication of legal rights of both the parties.

Having given thoughtful consideration to the submissions of

learned counsel for the appellant, this Court finds the instant regular second

appeal merits dismissal for the reasons to follow:

Tehsildar Narwana, who is a responsible Revenue Officer of the rank of Assistant Collector Grade-I, with consent of both the parties was appointed as local commissioner for demarcation of suit land, ignoring earlier local commissioners' reports relied upon by both the parties to adjudicate controversy between them in an effective manner. The local commissioner in the presence of appellant and contesting respondents No. 1 and 2, demarcated the disputed area and found encroachment of the appellant over land measuring 16 Sq. yards in khasra No. 232, owned by contesting respondents No. 1 and 2. No objection was ever raised to the said report by the appellant, nor any application was moved by him to afford him an opportunity to cross-examine the local commissioner.

In the absence of any such objection or prayer, learned Courts below have recorded concurrent findings accepting the said report which in the considered opinion of this Court are liable to be maintained.

Not mentioning of specific boundaries of khasra Nos. 231 and 232, in the site plan relates to insignificant aspect of the case, inasmuch as, both the khasra numbers were measured in the presence of parties as is clear from the attendance sheet prepared by local commissioner duly signed by both the sides. The local commissioner has categorically reported that there was encroachment of appellant over land measuring 16 Sq. yards, comprising khasra No. 232 owned by contesting respondents No. 1 and 2.

No question of law, much less substantial, has been raised in this appeal. Hence, the same is held not maintainable.

-4-

The instant regular second appeal, being meritless, is dismissed.

(RAMENDRA JAIN)
JUDGE

Yes/No

Yes/No