

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

**RSA No.1828 of 2009 (O&M)
Date of Decision: 16.07.2019**

Rishilal and another

.....Appellants

Versus

Mange Ram and others

..... Respondent

And

RSA No.1829 of 2009 (O&M)

Charan Singh

.....Appellant

Versus

Mange Ram and others

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Amit Jain, Advocate
for the appellants.

Mr. Vivek K. Thakur, Advocate
and Mr. Vansh Malhotra, Advocate
for the respondents.

LISA GILL, J.

This judgement shall dispose of R.S.A No. 1828 of 2009 and 1829 of 2009 as both these appeals arise from judgement and decree dated 05.03.2007, passed by the learned Civil Judge (Jr. Division), Narwana, as well as judgement and decree dated 12.02.2009, passed by the learned Additional District Judge, Jind.

Appellants (arrayed as defendants no.1 to 3 before the learned trial Court) have filed these appeals being aggrieved of judgement and

decree dated 05.03.2007, passed by the learned Civil Judge (Jr. Division), Narwana, as well as judgement and decree dated 12.02.2009, passed by the learned Additional District Judge, Jind. Suit filed by the respondent-plaintiff was decreed by the learned trial Court.

Brief facts necessary for the adjudication of the case are that plaintiff-respondent filed a suit for possession while pleading that he along with defendants-respondents no.4 to 6 were the owners of land measuring 01 Kanal 11 Marlas in Khasra no. 755. It is further pleaded that defendants no.1 to 3 i.e., the present appellants encroached upon 6 Marlas of this land by raising illegal construction of a house thereon. The plaintiff along with defendants no.4 to 6 claimed to be in possession of the remaining land. Demarcation of the property in dispute was stated to be carried out on 15.08.2004 wherein illegal possession of defendants no.1 to 3 was found. As the said respondents refused to hand over the property encroached upon by them, the present suit was filed.

Suit was contested by the present appellants. Separate written statements were filed by the defendants. Defendant no.1-Charan Singh in his written statement raised various preliminary objections. It is denied that any encroachment was made by him in Khasra no. 755. It is pleaded that defendant no.1-Charan Singh's brother Virender and father Sadhu Ram, constructed a double storey house on plot no. 754, which was owned and possessed by them. Construction was carried out after demarcation was conducted on 02.08.2001 and the plaintiff, it is stated was present at the time of demarcation in 2001. Demarcation carried out on 15.08.2004, was stated to be illegal and incorrect being obtained in the absence of Charan Singh-

defendant no.1 and in collusion with the Kanungo.

Defendants no.2 and 3 i.e., the present appellants-Rishi Lal and Hariom (in RSA No. 1828 of 2009) also denied the case as set up by the plaintiff. It is stated that their father Prem is the owner of plot no. 751/1, which was received by them during consolidation and has been in possession since then. A private partition between the said appellants and their father is stated to have taken place in the year 1979. Plot no. 751/1 came to the share of their father-Prem, who constructed a house thereon and he has been in possession thereof continuously. Illegal possession of the property by their father was denied. Reliance was placed on the demarcation carried out on 02.08.2001. Dismissal of the suit was prayed for.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled to the decree for possession as prayed for?OPP
2. Whether suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD
3. Whether plaintiff has got no locus standi to file the suit? OPD
4. Whether proper court fees has not been filed by plaintiff? OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record concluded that the plaintiff had successfully proved illegal encroachment on the plot, by the present appellants to the extent as alleged. Accordingly, suit filed by the plaintiff-respondent was decreed by the learned trial Court.

Appeal preferred by the present appellants, was dismissed by

the learned Additional District Judge, Jind, vide impugned judgement and decree dated 12.02.2009.

Aggrieved therefrom, present appeals have been filed by the appellants.

Learned counsel for the appellants vehemently argues that construction was carried out by the appellant Charan Singh after demarcation of his plot no.754, measuring 1 Kanal 2 Marlas, which was conducted under orders of the Assistant Collector, IInd Grade. He refers to demarcation report dated 08.08.2011 Ex.DW2/A, which is proved by DW-2. It is further contended that the plaintiff was very much present at the time of demarcation. The report of which is dated 02.08.2001, EX.DW2/B. No replication was filed by the plaintiff to the specific stand taken by the appellants in their written statement. However, in his testimony before the learned trial Court, plaintiff denied his presence at the time of demarcation conducted at the instance of the appellants. Thereafter, the appellants have examined an Expert to prove the signatures of the plaintiff appearing in the report Ex.PW2/A. Even as on date it is submitted that the appellants are not in possession of land exceeding 1 Kanal 2 Marlas. It is further submitted that the subsequent demarcation report is not worthy of any credence for the simple reason that it does not give the measurement of the adjoining plots. Thus, it cannot be said that there is any encroachment by the present appellants on the land belonging to the plaintiff. He relies upon the judgment of a co-ordinate Bench in **Baljinder Singh and others Vs. Maan Singh and others, 2017(1) PLR 744**. Reference is also made to Section 115 of the Evidence Act to submit that when no objection was raised by the plaintiff

from 2001 till 2004 when the appellants were raising construction on the plot, the present suit itself is not maintainable. The following substantial questions of law were framed at the time of admission of the appeal vide order dated 01.07.2009:-

1. Whether the demarcation of plot no. 755 carried out on 15.08.2004 can be made basis to return a finding that the defendant-appellant has encroached upon the said plot when the defendant has raised construction in pursuance of earlier demarcation of plot no. 754 by the Revenue Officer?
2. Whether the demarcation of all the plots in question was required to be carried out to find out encroachment upon the plot of the plaintiff?

It is thus prayed that this appeal be allowed and the judgements and decrees passed by the learned Courts below, be set aside and suit filed by the plaintiff-respondent be dismissed throughout.

Learned counsel for the respondent-plaintiff however while refuting the above said arguments submits that the report Ex.DW2/A is not worthy of any credence for the reason that the demarcation was carried out in violation of the rules. It is further contended that the demarcation report Ex.P-1, at the instance of the plaintiff reveals that proper procedure was followed. Site plan is attached alongwith. Moreover, the appellants were very much present at the time of demarcation. No construction was raised by them at the relevant time. Learned counsel for the respondent contends that at the time of admission of the appeal, it is wrongly stated on behalf of the appellants that demarcation of all the plots in dispute was not carried out. This is falsified by the site plan attached with the demarcation report. It is thus prayed that the appeals filed by the appellants be dismissed and

judgements and decrees passed by the learned Courts below be upheld.

I have heard learned counsel for the parties and have gone through the record with their assistance.

Undisputed facts are that the plaintiff-respondent is the owner of land measuring 01 Kanal 11 Marlas comprised in khasra no. 755. As per the plaintiff, 6 Marlas of land has been encroached upon i.e., 4 Marlas by appellant-Charan Singh and 2 Marlas by appellant-Rishilal. In order to prove his case, plaintiff has relied upon the demarcation report, Ex.P2/A. Said report has been duly proved by PW-2-Partap Singh, Kanungo. Doubtlessly, it is mentioned by PW-2 that ownership of Khasra no. 754 has been stated on the basis of information by the inhabitants of the village. However, this fact does not detract from the credibility of the report, as it is undeniable, that the revenue record was seen at the time of demarcation in the presence of the parties and others. I have perused the demarcation report, Ex.P2/A. There is a specific reference to demarcation being conducted with reference to the revenue record including '*Aksh Shajra*', which was available at the spot. It is mentioned in the report that three permanent points (*pucca* points) were taken by the *Kanungo* and demarcation of Khasra nos. 748, 749, 750, 751/1, 751/2, 752, 753, 754 and 755 was conducted as per the field book and '*Aksh Shajra*'. House was found to be constructed on Khasra no. 751/1, 753 and 754. Appellants-Rishilal son of Karta Singh and Hariom son of Prem Singh owners of Khasra no. 751/1 were found to have raised illegal construction on 2 Marlas of land in Khasra no. 755. It is specifically mentioned that the appellant-Charan Singh son of Sadhu Ram, though present, refused to append his thumb impressions at the time of demarcation.

Appellant-Hari Om son of Prem Singh has duly signed the said demarcation report at Sr. No. 5.

Learned counsel for the appellants has argued that the plots in question are small pieces of land which were in-fact allotted by the Gram Panchayat. There appears to be some discrepancy in the actual boundaries which has probably led to this anomaly. Appellants, it is stated are not in possession of any portion beyond the land allotted to them. I do not find any merit in the said argument raised by learned counsel for the appellants. It is borne out from the evidence on record that the demarcation report, Ex.P2/A, was submitted after proper demarcation of area with reference to the revenue record which was available at the spot. Reliance by learned counsel for the appellants on report dated 02.08.2001, Ex.DW2/A, is of no avail for the reason that it pertains only to Khasra no. 754. It has been rightly observed by the learned Additional District Judge, Jind, that there is no question of any encroachment being shown in report dated 02.08.2001, Ex.DW2/A as the construction was admittedly raised in the year 2003. Therefore, even if the plaintiff was a signatory to the report dated 02.08.2001, it does not lead to an inference that there is no encroachment carried out by the appellants, at a later stage as alleged by the plaintiff. **Baljinder Singh's case (supra)**, relied upon by learned counsel for the appellants, is not applicable to the facts and circumstances of the present case.

Another argument vehemently raised by learned counsel for the appellants that there is some mistake or discrepancy in the area marked in the '*Aksh Shajra*', is clearly beyond pleadings and is being raised for the first time in the present appeal, which is clearly impermissible.

Both the learned Courts below returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference. The substantial questions of law framed at the time of admission of the appeal are thus answered in favour of the plaintiffs-respondents and against the appellants-defendants.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 05.03.2007 and 12.02.2009 passed by the learned Civil Judge (Jr. Division) Narwana and learned Additional District Judge, Jind, respectively, are upheld.

Both the appeals are, consequently, dismissed with no order as to cost.

16.07.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.