

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

RSA No.1125 of 2012 (O&M)
Date of decision: 11.02.2019

Panmeshwari and others

..... Appellants

Versus

Shiv Raj and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Chanderhas Yadav, Advocate
for the appellants.

Mr. Harkesh Manuja, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs claiming their ownership over Khasra No.117 and 262 whereas defendants claim ownership over the land comprised in Khasra No.116, 263 and 264. The plaintiffs filed a suit asserting that they have got the land demarcated and 19 marlas of land have been encroached upon by the defendants whereas defendants claim that there is no encroachment and in fact, the demarcation, if any, was carried out without notice to them. It was further claimed that the plaintiff's case with regard to ownership of Khasra No.117 is also not correct because there was no relinquishment by Narender Singh. Learned trial Court dismissed the suit after recording that the demarcation was carried out without notice to the

defendants. Before the First Appellate Court, the plaintiffs-appellants filed an application under Order 41 Rule 27, CPC for appointment of Local Commissioner by the Court to get the property demarcated by way of additional evidence. The aforesaid application has also been dismissed while dismissing the appeal.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

In the present case, the only issues which needed adjudication were “whether the land comprised in Khasra No.117 and 262 is owned by the plaintiffs and whether any part thereof is encroached upon by the defendants or not.” The plaintiffs had come to the Court on the strength of a demarcation report which was found defective by the Courts. In such eventuality, the Courts in order to do substantive justice should have got the property demarcated rather than dismissing the suit filed by the plaintiffs. Still further, before the First Appellate Court, an application to that effect was also filed which was again dismissed. The Courts have been set up to do substantive justice. Therefore, the Courts should not decide the case merely on technicalities. The procedures are hand made for justice. The procedures should be adopted in order to serve the cause of justice not to scuttle it.

Accordingly, the judgments passed by the Courts below are set aside. The case is remitted back to the trial Court to appoint a Local Commissioner who would demarcate the entire land including the land claimed by the plaintiffs as well as defendants, in the presence of the parties and after examining the revenue record. After the report is submitted, the

Court would permit one opportunity to each of the party to lead further evidence, if so required. Thereafter, the Court would proceed to re-decide the suit.

With these observations, the appeal is disposed of.

Parties through their counsel are directed to appear before the trial Court on 08.03.2019.

11.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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