

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1126-2016 (O&M)
Date of decision: 18.12.2019

Babu Ram

...Appellant

V/s.

Gurdial Singh and others

...Respondents

AND

RSA-2242-2015 (O&M)

Babu Ram

...Appellant

V/s.

Gurdial Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. R.K.Saini, Advocate
for the appellant.

Mr. Arvinder Arora, Advocate for
the respondents.

RITU BAHRI, J. (Oral).

This order shall dispose of two Regular Second Appeals
bearing No. 1126 of 2016 and 2242 of 2015.

In RSA No. 2242 of 2015, the appellant/plaintiff has come up
in appeal against the judgments of the trial Court dated 24.12.2011 and
lower appellate Court dated 13.08.2014 whereby his suit for permanent
injunction restraining the defendants from interfering into peaceful
possession of the plaintiff and his brother Khilla Ram and Jaswant as owner

of the land as per the details mentioned in the head note of the plaint, has been dismissed.

A perusal of the judgment of the trial Court shows that stand taken by the plaintiff was that plaintiff and his brothers were in occupation of land adjoining to their land belonging to father of defedants. The trial Court framed the following issues on 06.05.2011:-

1. Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD.
3. Whether plaintiff has no cause of action?OPD.
4. Whether plaintiff has concealed the true and material facts from the court?OPD.
5. Whether the suit is bad for non joinder of necessary parties?OPD.
6. Relief.

In para 10 of the trial Court judgment, it has been observed that the Local Commissioner was initially appointed on 14.05.2003 and as per his report (Ex.D1), the plaintiff had interfered in the proper demarcation and thereafter Local Commissioner was again appointed and ultimately report of the Local Commissioner was received with the police help and in this report it was specifically reported that plaintiff is in illegal possession of the property. As per the report, the plaintiff is found to be in illegal possession of the property, hence the suit of the plaintiff for permanent injunction was dismissed. The appeal against the said judgment was also dismissed by the lower appellate Court on the ground of delay itself.

In RSA No. 1126 of 2016, the appellant/defendant has come up in appeal against the judgments of the trial Court dated 21.02.2015 and lower appellate Court dated 07.12.2015 whereby the suit filed by the

plaintiffs for possession of 10 Marlas of land illegally encroached upon by the defendants, has been decreed.

The brief facts of the case are that respondent-Gurdial Singh had filed suit for possession of 10 marlas of land which Babu Ram have encroached upon. The demarcation report of the local Commissioner dated 03.02.2011 (Ex.P7) had been made basis to decree the suit of the plaintiffs and dismissed the suit of the present appellant/defendant. The finding given by the Local Commissioner in the demarcation report (Ex.P7) was that Babu Ram was having land bearing khasra No. 22//9, 10 in village Budha Khera had encroached upon the land belonging to Gurdial bearing Khasra No.1//6 and 2//10 in village Kalyana. Finally both the Courts below had decreed the suit in favour of the plaintiffs/respondents

Learned counsel for the appellant argues that the suit filed by the appellant Babu Ram and suit filed by the respondent-Gurdial Singh had been decreed only on the basis of demarcation report dated 03.02.2011 (Ex.P7). If the appellant/defendant had objections with respect to demarcation report dated 03.02.2011(Ex.P7), he should have filed an application under Order XXVI Rule 10 CPC. Order XXVI Rule 10 CPC is reproduced as under:-

“10. Procedure of Commissioner:-

(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) **Report and depositions to be evidence in suit:-** The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may

examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) **Commissioner may be examined in person:-**Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.”

The appellant-Babu Ram was required to file objections under Order XXVI Rule 10 CPC or he could have examined the Commissioner personally in open Court as per Order XXVI Rule 10(2) CPC. Further both the Courts after examining Local Commissioner report had not chosen to make further inquiries as per Order XXVI Rule 10(3) CPC. In the absence of objections, both the Courts below have rightly accepted the Local Commissioner Report and dismissed the suit of the appellant Babu Ram in RSA No. 1126 of 2016 and decreed the suit of Gurdial Singh and others in RSA No. 2242 of 2015.

No substantial question of law arises in both the appeals.

Dismissed.

Pending applications also stand dismissed.

(RITU BAHRI)
JUDGE

18.12.2019

Divyanshi

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