

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

RSA-3881-2016(O&M)

Date of decision:-4.9.2019

Munna Lal and another

...Appellants

Versus

Om Parkash and others

...Respondents

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

Present: Mr.P.S. Saini, Advocate with
Ms.Mannat Anand, Advocate
for the appellants.

Mr.Rajender Chhokar, Advocate
for the respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that one Balbir Singh, resident of village Jagshi, District Sonapat was owner of land situated at Ashok Vihar Colony, Kutani Road, Panipat; he had sold a plot measuring 150 square yards comprised in khasra No.87 killa No.8(7-0), 13(7-8), 18/1(1-13) total land measuring 16 kanals 1 marla to defendants S/Sh.Dhanender son of Pawan Kumar, Lachman,

Munna Lal and Shambhu Nath sons of Raj Kumar, residents of Ashok Vihar Colony, Panipat vide sale deed No.1092 dated 15.5.2001 and he had also sold 6 marla 6 sarsai of land comprised in khasra No.87, killa No.9(7-2), 10/1 (0-14), 10/2(6-3), total land measuring 13 kanals 19 marlas to plaintiff Sh.Om Parkash son of Sh.Maman Ram, resident of village Jalmana, Tehsil Bapoli, District Panipat vide sale deed No.12927 dated 14.3.2007.

However, the dispute arose between the vendees of the two sale deeds, which was essentially of demarcation. The plaintiff Om Parkash had filed a suit for grant of permanent injunction against defendants – Dhanender, Lachman, Munna Lal and Shambhu Nath, on getting notice defendants No.2 to 4 put in appearance and filed written statement contesting the suit.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence. Tehsildar, Panipat was appointed as Local Commissioner by the Court, who had submitted his report Ex.PW3/A. The trial Court placing reliance upon the report of Local Commissioner Ex.PW3/A, in which it had been observed that the suit land belonging to the plaintiff falls in Killa No.10/1 and 10/2 of rectangle No.87 and it had been illegally encroached upon by the defendants, decreed the suit of the plaintiff and defendants were restrained from interfering in the ownership rights of the plaintiff over the suit property and from raising any construction over it vide

judgment and decree dated 14.5.2014.

The defendants felt aggrieved by the said judgment and decree and they had filed an appeal, which was dismissed by Additional District Judge, Panipat vide judgment and decree dated 6.10.2015.

Still feeling dissatisfied, the defendants have knocked at the door of this Court by way of filing regular second appeal, notice of which was issued to the respondents/plaintiffs and respondent No.1, who is contesting respondent has put in appearance through counsel.

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

The dispute between the parties is essentially of demarcation. Both the parties have got the sale deeds in their favour. The khasra numbers of the area purchased by them are different. The point of difference is the exact location of the plots of the contestants. The trial Court had appointed Tehsildar, Panipat to visit the spot and carry out the demarcation. He accordingly did so on 18.4.2009 and submitted his report in the Court. Now the question arises as to whether the report could be accepted as such or was required to be proved in accordance with law. No doubt the report could have been accepted, if both the parties had agreed to do so and none of the parties had raised any objection against the report.

However, defendants had reservations regarding the report. Under the circumstances, it was incumbent upon the plaintiff, who was relying upon the report to get it proved in accordance with law by summoning the Local Commissioner. However, it was not done and in his place one Sh.Rajbir Singh, Naib Sadar Kanungo, Panipat was examined. Admittedly, the demarcation had been carried out by Tehsildar, Panipat, who had been appointed by the Court and Naib Sadar Kanungo could not possibly prove that report and depose that the demarcation had been conducted properly. The matter would have been different, if Tehsildar, Panipat was not available or had gone abroad or for that matter was not alive but then there is nothing on file to show that. PW3 Sh.Rajbir Singh, Naib Sadar, Kanungo claimed that he was associated during the demarcation proceedings. However, his deposition with regard to demarcation cannot be given much weightage. Only the revenue officer, who was entrusted with the task of carrying out the demarcation and who had actually done so at the spot could have deposed that he did that as per High Court Rules and Orders and as per instructions of Financial Commissioner, Punjab and testimony of no other person including the official assisting him can be taken at par with the deposition of such revenue officer. The report itself indicates several irregularities and illegalities. The demarcation is shown to have been conducted with a measuring tape when as per rules it should have been conducted

using a Zarib. There could be a possibility of some inaccuracy in the dimensions of the measuring tape, which stands ruled out if the demarcation is conducted using a Zarib. Therefore, such type of report which is not been proper could not be made basis for decreeing the suit of the plaintiff. The trial Court clearly fell in error in doing so, which was compounded by Additional District Judge, Panipat by dismissal of the appeal. The basis of the decrees passed by the Courts below is the report of Local Commissioner, which is not legally sustainable.

Therefore, the appeal is accepted, the impugned judgments and decrees passed by the Courts below are set aside and the case is remanded to the trial Court with a direction to appoint an experienced revenue officer as Local Commissioner, who would visit the spot after giving due notice to both the parties. He is to carry out the demarcation as per High Court Rules and Orders as well as instructions of Financial Commissioner, Punjab and then submit report in the Court. Both the parties would be given an opportunity to file objections against the report of Local Commissioner, then he be examined as a witness in the Court granting liberty to the parties filing objections to cross-examine him and thereafter the case be decided afresh. The fee of the Local Commissioner to be assessed by the trial Court shall be paid by the plaintiff.

Since the case is quite old, the trial Court is directed to

complete the entire exercise within three months from the date of receipt of copy of order. The parties through their counsel are directed to appear before the trial Court on 20.9.2019.

Lower Courts record be returned immediately.

4.9.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No