

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

**RSA No.3710 of 2015 (O&M)
Date of Decision.15.01.2019**

Fateh Singh

...Appellant

Vs

Maha Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Khurana, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The regular second appeal is directed against the concurrent finding of fact whereby the suit of the appellants-plaintiffs claiming permanent and mandatory injunction for removal of encroachment from land comprised of khasra No.94, has been dismissed by both the courts below.

The plaintiffs asserted that they along with defendant were co-sharers. It was a gair mumkin chah pukta situated in lal dora and was being used for irrigation and subservient of agriculture but the defendant had already encroached the land by raising chabutra. Preceding to filing of the suit, a demarcation was got conducted by Kanungo, PW2, who submitted report Ex.P1, which established encroachment.

Defendant opposed the suit and raised objection qua maintainability of the suit. It was alleged that chabutra had already been constructed, therefore, mandatory injunction was not maintainable. It was a reconstruction made on the foundation of the old construction and the site plan relied upon by the plaintiffs was

also disputed. The plea with regard to pendency of the suit filed by defendant Maha Singh against the plaintiff Fateh Singh was not denied. The demarcation report was objected to on simple ground that possession shown was of one Ramphal whereas he had died 30 years ago.

Plaintiffs in support of aforementioned pleadings examined as many as five witnesses and brought on record Ex.P1 to P5 whereas the defendant examined four witnesses and brought on record Ex.D1 to D4.

Mr. Khurana, learned counsel appearing on behalf of the appellants submitted that once the demarcation report Ex.P1 proved through the testimony of PW2 has gone unrebutted/uncontroverted, there was no occasion for the Courts below to dismiss the suit, for, there was compliance of High Court Rules by fixing permanent marks. It was unnecessary to put flags once the measurement was done by keeping stones. The property stated to be under *lal dora* cannot be partitioned and efficacious remedy was under Section 39 of the Specific Relief Act.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Khurana, for, demarcation report also proved possession of Ramphal, who had died already 30 years ago. Be that as it may. Even the outcome of the suit filed by the defendant against the plaintiff also remains a mystery. The ratio decidendi culled out by Division Bench of this Court in **Bachan Singh Vs. Swaran Singh** **2000(3) RCR (Civil) 70** deals with injunction but not mandatory. A

co-sharer can seek injunction against the co-sharer from raising construction but the construction in this case had already been raised. It has also not been established that it was a construction or reconstruction. All these factors weighed in the mind of the Courts below in non-suiting the plaintiffs.

In view of the aforementioned facts, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 15, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No