

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

**RSA No.2177 of 2017 (O&M)
Date of decision:31.01.2019**

Ram Niwas and others

... Appellant(s)

Vs.

Ishwar

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Saurabh Dalal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal at the instance of the appellant-defendant is directed against the judgment and decree of the Lower Appellate Court which reversed the judgment and decree of the trial Court, in essence, suit dismissed by the trial Court, has been decreed, by the Lower Appellate Court.

The plaintiff sought the possession alongwith consequential relief of permanent injunction against the defendants on the premise that plaintiff had been owner in possession of Gair Mumkin plot comprising khewat no.923/879 khatoni no.1287 khasra no.545 as per the site plan marked ABCD situated within the revenue estate of village Mehrana, Tehsil Beri, District Jhajjar.

There was a family settlement amongst the brothers and plaintiff was the only owner in possession of the property in question and

used for laying the firewood, storing cattle food etc. The defendants being strong headed person occupied the western portion which is shown by red colour marked AEFD in the site plan and also constructed a Pukhta Wall at mark EF of the property, therefore, cause of action arose to file the suit.

The defendants opposed the suit on the ground of maintainability, mis-joinder of the parties and denied the alleged encroachment. It was stated that they were owner of the land and nothing to do with the land comprised in khasra no.543.

The trial Court framed as many as 08 (eight) issues including the issue of Relief. The plaintiff in support of the pleadings relied upon the report of Hari Om Sharma, Field Kanungo which was negated by the trial Court as demarcation was conducted in the absence of the defendants, resulting into dismissal of the suit. In appeal, both the parties consented for fresh demarcation. In view thereof, a direction was issued to conduct the demarcation and costs of inspection was to be borne equally by the parties to the lis. However, the respondent-plaintiff deposited his share but the appellant-defendants did not. The demarcation was conducted, appellant-defendants though appeared before the demarcator but did not append their signatures on presence sheet or demarcation report. The demarcation report dated 19.9.2016 revealed that defendants encroached khasra no.545 which has been noticed by the Lower Appellate Court. The Lower Appellate Court forfeited the right of the appellant-defendants in not permitting to raise arguments and directed the authorities to recover the costs as arrears of land revenue.

Mr. Saurabh Dalal, learned counsel appearing on behalf of the appellant-defendants submitted that in case opportunity to address arguments has been given, the demarcation report could have been belied.

This Court called upon Mr. Saurabh Dalal, learned counsel for the appellant-defendants to address arguments on merits to establish that if there was something miss in the report so that opportunity sought could have been granted.

The conduct of the appellant-defendants leaves no manner of doubt that they were aware of demarcation report conducted by the Kanungo establishing the encroachment but did not pay the charges. Such reckless approach has rightly been negated by the Lower Appellate Court. Even otherwise, as per the provisions of Rule 10(2) Order 26 CPC, demarcation report/order is per-se admissible.

Thus, arguments of Mr. Dalal, are not able to bring the case within the realm of illegality and perversity to form the different opinion than the one arrived at by the Lower Appellate Court.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 31, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No