

RSA-2305-2017 (O&M)

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

**RSA-2305-2017 (O&M)
Date of decision : 02.04.2019**

Netar Parkash and others

... Appellants

Versus

Punjab State and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Annkur Soni, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-5624-C-2017

For the reasons stated in the application, which is supported by an affidavit, delay of 83 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

In pursuance the order dated 08.03.2019, comments of the concerned Judicial Officer as well as original records of the Courts below, have been received.

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the appellants-plaintiffs for permanent injunction restraining the defendants from encroaching upon a strip of land varying from 1 karam to about 3 karams in width out of land of plaintiffs along with other co-sharers, touching the northern side of PWD

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Raod, bearing Khasra No.184, has been dismissed.

The plaintiffs sought the aforesaid relief on the premise that the other co-sharers were not living in the village and the present suit was filed for their benefit. The width of the road was incorporated in revenue record, but under the misconception, the defendants wanted to take the possession of the land more than their share.

The suit was contested by the respondents-defendants by relying upon the Government instructions issued vide letter dated 04.10.2007, whereby, demarcation was done by the revenue officials and the land was found to be encroached by the plaintiffs.

In order to prove the pleadings, the plaintiffs examined two witnesses and brought on record Ex.P1 to Ex.P6.

However, during the pendency of the suit, an application for appointment of the Local Commissioner was submitted, which was allowed, vide order dated 20.03.2009 and the report along with *aks sajra* came on record.

The defendants reiterated their version in the written statement and also brought on record demarcation report dated 04.10.2007.

The trial Court, on the basis of the evidence, dismissed the suit on the premise that the plaintiffs have to stand on their own legs and could not take the benefit of weakness of the defendants as from the entire evidence, it has not been proved that the defendants have encroached upon the strip of land varying from 1 karam to 3 karam. However, the lower Appellate Court, while dismissing the appeal, relied upon the report dated 23.11.2007, according to which, the encroachment was only 1 kanal 4 marlas, but not to the report of the Local Commissioner dated 04.11.2009,

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whereby the encroachment is to the extent of 3 marlas 4 sarsahi.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper book as well as records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Soni, for, the plaintiffs have not been successful in proving the alleged encroachment on behalf of the defendants, rather as per the original record, report of the Local Commissioner dated 04.11.2009 showed the encroachment to the extent of 3 marlas 4 sarsahi, but not 1 kanal 4 marlas as erroneously observed by the lower Appellate Court, which was as per report dated 23.11.2007, subsequently replaced with the report dated 04.11.2009. In my view, the lower Appellate Court while giving the finding did not notice the report dated 04.11.2009, whereby the encroachment was found to the extent of 3 marlas 4 sarsahi.

With the aforesaid observations, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference. Accordingly, the second appeal is dismissed.

02.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**