

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

115

RSA-6028 of 2017(O & M)  
Date of Decision:13.03.2019

Gurmit Singh and another

....appellants

Versus

Harjit Singh and others

.....respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.Sandeep Jain, Advocate  
for the appellants

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**AMIT RAWAL, J. (ORAL):**

The appellants-plaintiffs have not been successful before the Courts below in claiming possession of the suit property alleged to be encroached by the defendants in a suit filed in the year 1995 i.e. 1 marla 4 ½ Sarsahi out of total land measuring 1 Kanal-17 marlas. It was alleged that the plaintiffs are exclusive owners of land measuring 1 Kanal-17 Marlas on the basis of the sale deeds dated 13.02.1992, 30.07.1990 and 20.06.1990. The defendants illegally encroached upon the suit land as described above.

The defendants raised the objections qua maintainability and on merits denied the encroachment and stated that they have purchased 07 marlas i.e. 04 marlas + 03 marlas i.e. vide registered sale deed dated 16.04.1959 from one Lajwanti wife of Beant Singh @ Balwant Singh and thereafter Attar Singh purchased an area measuring 3 marlas, vide sale deed dated 27.06.1960 and the construction was raised in the year 1959-60 on the said 10 marlas of land.

The plaintiffs in support of evidence examined PW1 Agya Ram

Lambardar, PW2 Roshan Lal, PW3 Sukhdev Singh PW4 Surinder Singh, PW5 Bir Mohinder Pal and PW6 Joginder Lal, Field Kanungo, who demarcated the land.

The defendants on the other hand examined two witnesses.

The previous suit was dismissed by the trial Court on 07.08.2001. In an appeal preferred by the plaintiff, the lower Appellate Court vide judgment and decree dated 02.04.2004 remitted the matter by setting aside the judgment and decree with a direction to get the suit property demarcated of the plaintiffs as well as of the defendants in accordance with the High Court Rules and Orders and instructions issued by the Financial Commissioner, Punjab, Chandigarh.

Mr.Sandeep Jain, Advocate, learned counsel appearing on the behalf of the appellants submitted that the Local Commissioner gave the report that it was not possible to demarcate the land. The trial Court dismissed the suit and again the matter was placed before Lower Appellate Court in Civil Appeal No.258 dated 08.08.2006 which was decided on 04.01.2011. The matter was again sent to the lower Court. The second report was also to the same effect. In such circumstances, it was submitted that the trial Court should have looked into the report of filed kanungo which has emphatically proved the encroachment, thus, there is gross illegality and perversity.

I am afraid the aforementioned argument is not sustainable for the simple reason that the report of local commissioner was not found as per the rules and orders and instructions of the Financial Commissioner. It was in that circumstances, the matter was remitted. But once the effort turned out to be futile the suit on the basis of title alleging encroachment was

inevitably liable to be dismissed. In other words, the plaintiff failed to discharge the onus regarding alleged encroachment.

The findings of fact and law, thus, cannot be said to be suffering from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law.

Resultantly, the appeal is dismissed.

**March 13, 2019**

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**(AMIT RAWAL)  
JUDGE**

Whether speaking/reasoned  
Whether reportable-

Yes/No.  
Yes/No