

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

RSA No.6195 of 2017 (O&M)

Date of decision:05.02.2019

Mansa Ram (deceased) through LRs

... Appellant(s)

Vs.

Khazani

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjay Verma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in claiming declaration with the consequential relief of possession and permanent injunction on the premise that he was owner in possession of plot bearing no.208 situated within the revenue estate of abadi deh of village Beri, Tehsil Beri, District Jhajjar.

It was alleged that property shown by letters ABCD in the site plan was in possession of the plaintiff and had been using for tethering cattle and storing firewood etc but the defendant in the absence of the plaintiff encroached the portion marked by letters AJID forcibly.

The civil suit bearing No.133 of 1997 was filed against the husband of the defendant which was dismissed on 10.03.2007 because plot no.207 of defendant was adjoining the property in question and thus, Khazani was not the necessary party.

The defendant opposed the suit and stated that area marked by letters ABCD was not part of plot no.208. In fact, the site plan was disputed.

The plaintiff in support of the pleadings examined himself as PW1. On the other hand, defendant examined Ishwar Singh as DW2 and Jogender Singh, HRC, DC Office, Jhajjar as DW3.

Mr. Sanjay Verma, learned counsel appearing on behalf of the appellant-plaintiff submitted that the trial Court failed to notice the report of the Local Commissioner which suggested that in case area 15 feet from the plot no.207 is added, short fall of plot no.208 belonging to the plaintiff can be adjusted. The measurement and sale deed Mark X were in tandem with the site plan. Though the defendant had also placed on record the sale deed but as per the site plan, left the area towards western side of the site plan. In case that area is taken in plot belonging to the defendant, there would be no encroachment.

I am afraid the aforementioned arguments are not sustainable, for, on perusal of the report of the Local Commissioner, it is evident that he did not utter a word about encroachment except giving a suggestion that in case area 15 feet is added, short fall would be taken care of, i.e. Plot no.208. It was obligatory upon the plaintiff to get the suit land demarcated before filing of the suit. An attempt was made by way of additional evidence before the Lower Appellate Court to take assistance of the Local Commissioner which was also declined. Even the suit did not contain the relief of possession. The plaintiff failed to establish the ownership with regard to encroachment as reflected in the site plan. All these factors have

been considered by both the Courts below.

For the reasons aforementioned, there is no illegality and perversity in the judgments and decrees of the Courts below. No substantial question of law arises for adjudication of the present appeal.

The regular second appeal is dismissed.

February 05, 2019

savita

(AMIT RAWAL)
JUDGE

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