

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

RSA No. 6286 of 2018 (O&M)

Date of decision : March 27, 2019

Jai Dayal and others

.....Appellants

Versus

Jiya Lal

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Saurabh Bajaj, Advocate
for the appellants.

LISA GILL, J.

This appeal has been filed by the appellants – defendants challenging judgment and decree dated 08.08.2017 passed by the learned Civil Judge (Senior Division) Kurukshetra as well as judgment and decree dated 16.11.2018 passed by the learned Additional District Judge, Kurukshetra.

Brief facts necessary for adjudication of the case are that the plaintiff filed a suit for mandatory injunction for directing the appellants – defendants to remove illegal encroachment and construction raised on the plaintiff's land as detailed in the plaint. Suit filed by the plaintiff – respondent was initially dismissed on 29.07.2013. In the appeal preferred by the plaintiff the matter was remanded by the learned learned Additional District Judge, Kurukshetra vide order dated 06.02.2017 while observing as under:-

“ As a result of the discussion hereinbefore, the impugned judgment and decree passed by the learned lower Court are set aside. Since the point in dispute relates to the demarcation of the land in dispute, which can only be decided on the basis of

the report of the Local Commissioner, the case is remanded to the Court concerned with a direction to appoint a respectable revenue officer as a local Commissioner to demarcate the land in dispute strictly in accordance with the Financial Commissioner's instructions contained in Punjab and Haryana High Court Rules and Orders Volume-I Chapter-I Part-M. On receipt of the report, the learned lower Court shall permit the parties to take such objections, if any, to the report of the local Commissioner and thereafter decide the case afresh, within a period of six months from the date of receipt of the copy of this judgment.”

After remand of the matter, Field Kanungo AW1Naresh Kumar was appointed as a Local Commissioner. Documents Ex. AW2/A and Ex. DW5/D dated 03.03.2017 were submitted. Demarcation was conducted through the Total Surveyor Machine. Opportunity was given to both the parties to file objections as well as to cross examine the witness regarding authentication of the demarcation report.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled to decree for mandatory injunction as prayed for?OPP.
- ii) Whether the plaintiff is entitled to decree for permanent injunction as prayed for?OPP
- iii) Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
- iv) Whether the plaintiff has no locus standi and cause of action to file this suit? OPD.
- v) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts and circumstances of the case decreed the suit filed by the plaintiff – respondent. Appeal filed

by the defendants - appellants was dismissed by the learned Additional District Judge, Kurukshetra vide judgment dated and decree dated 16.11.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that demarcation has been carried out de hors the rules under the Punjab Land Revenue Act and the instructions contained in the High Court Rules and Orders. Revenue records were not seen by the Local Commissioner at the time of demarcation. As per the prescribed rules, demarcation should have been conducted by the use of a 'Jareeb' and not by the Total Surveyor Machine. Demarcation was in fact conducted in violation of direction given by the learned Additional District Judge, Kurukshetra on 06.02.2017. Learned counsel relies upon the judgment of this Court in **Ram Murti Goyal versus Smt. Basant Kaur and others 1991 (2) PLR 54.** It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 08.08.2017 passed by the learned Civil Judge (Junior Division), Kurukshetra as well as judgment and decree dated 16.11.2018 passed by the learned Additional District Judge, Kurukshetra be set aside.

I have heard learned counsel for the appellants and have perused the file as well as a photocopy of the record, which was furnished by learned counsel in Court today.

Grievance of the appellants is that the demarcation of the property in question has not been carried out in compliance with order dated 06.02.2017 passed by the learned Additional District Judge, Kurukshetra inasmuch as demarcation was conducted, using a total surveyor machine, instead of using the traditional Jareeb etc. by the local Commissioner appointed by the court. It is a matter of record that after remand of the

matter by the learned Additional District Judge, Kurukshetra, learned trial Court appointed the concerned Kanungo as a local Commissioner. Report Ex.AW/A was received and an opportunity was given to both the parties to file their objections. Naresh Kumar, Field Kanungo (AW1) and Gurdeep Singh (AW2) Operator of the Total surveyor machine were examined. RW1 Krishan Dayal was examined by the appellants to controvert the demarcation report. Perusal of the testimony of Naresh Kumar, Field Kanungo reveals that the entire revenue record, including Field Book, Musavi jamabandi etc. was available at the time of demarcation. Halqa Patwari was also stated to be present. Demarcation was done while pressing into use the total surveyor machine, which is a scientific and accurate method of carrying out demarcation especially in a congested/constructed area. It is further apparent from a perusal of the statement of AW1 Naresh Kumar that 'three pucci burjiya' were identified for carrying out the demarcation. There is nothing on record to discredit the said demarcation report.

Learned counsel for the appellants has vehemently argued that Gurdeep Singh (AW2) was not competent to carry out the demarcation. It is relevant to note that Gurdeep Singh is only an operator of the total surveyor machine. AW1 has clarified that it is with the consent of both parties that demarcation was carried out with the help of the Total Surveyor Machine and Gurdeep Singh was enlisted for operating the machine. His experience certificate (Ex.AW2/B) and certificate (Ex.AW2/A1) whereby Gurdeep Singh is stated to have completed the course of Computer Fundamental, DOS, Windows, MS Word, Excel, Power Point, HTML, Internet and Training of AutoCAD are on record. As per Ex. AW2/B, Gurdeep Singh is

reflected to be working as Senior Surveyor (Civil) from June, 2009. It is, thus, rightly held by the learned trial Court that though Gurdeep Singh may be lacking educational qualification, but his technical knowledge for handling the total surveyor machine was not inadequate. Moreover, it is a matter of record that the demarcation was carried out in the presence of the revenue officials by AW1 Naresh Kumar, Field Kanungo (appointed by the Court) and the revenue record was very much available at the spot. Ex.DX/B is the memo of presence of the witness, which is not denied. Learned counsel for the appellants is unable to point out any shortcoming or defect in the demarcation, which was carried out.

As has been extensively discussed by the learned trial Court the equipment used to conduct the demarcation is a scientifically better and more accurate method of carrying out demarcation. It is matter of common knowledge that it is a total surveyor machine, which is now pressed into service for conducting the proper survey of even thickly populated areas. It is specifically observed by the learned trial Court that the Haryana Revenue and Disaster Management has also adopted this scientific method for resolving boundary disputes. It finds mention in the Haryana Land Records Manual, 2013 (revised edition) as well. AW1 Naresh Kumar in his cross examination has specifically stated that demarcation in question was carried out strictly in accordance with the Financial Commissioner's instructions contained in the Punjab and Haryana High Court Rules and Orders Vol. 1 Chapter 1. RW1 Krishan Dayal has admitted that he was very much present at the time of demarcation conducted on 08.03.2017 though it is stated that he did not understand anything. Reliance by learned counsel for the appellants on the judgment of this Court in Ram Murti Goyal versus Smt.

Basant Kaur and others 1991 (2) PLR 54 is of no avail as in the said case the revenue record, it is observed was not available with the local Commissioner when demarcation was carried out at the spot. This is so mentioned in para 9 of the judgment. Neither was the local Commissioner, who carried out the demarcation, examined whereas in the present case, it is a matter of record that Naresh Kumar, Field Kanungo who was present at the time of demarcation was duly examined as AW1. The revenue record was also available on the spot at the time of demarcation. As per the demarcation report, encroachment by the appellants is clearly reflected. There is no evidence to prove otherwise.

Therefore, I do not find any ground whatsoever to interfere in the impugned judgments and decrees merely on the ground that the authorities have not conducted the demarcation by using the traditional Jareeb etc. and have chosen to press into use a more scientific, accurate and better method of carrying out demarcation.

Both the learned courts below have rendered concurrent findings of fact against the appellants on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 08.08.2017 passed by the learned Civil Judge (Senior Division) Kurukshetra as well as judgment and decree dated 16.11.2018 passed by the learned Additional District Judge, Kurukshetra. which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

March 27, 2019

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(Lisa Gill)

Judge