

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

RSA No.2551 of 2017 (O&M)

Date of decision : 08.03.2019

Balwinder Singh

...Appellant

Versus

Gulzar Singh (deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ivan Singh Khosa, Advocate for the appellant.

Mr. Sanjeev Arora, Advocate for respondent No.1.

Mr. A.K. Jain, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing suit for possession.

Plaintiff claimed that defendants have encroached upon the suit land. Plaintiff has also admitted that he is also in possession of land measuring 13 marlas belonging to the defendants. Initially, the suit filed by the plaintiff was dismissed by the trial Court on 05.12.2008, however, in first appeal, the case was remitted back vide judgment dated 02.06.2011. Thereafter, the trial Court appointed a Local Commissioner and got the land demarcated, in which the assertions made in the plaint were found to be true. Accordingly, the suit was decreed vide judgment and decree dated 16.12.2013.

Learned First Appellate Court on re-appreciation of the evidence have dismissed the appeal. Both the Courts have ordered that suit of the plaintiff is decreed with costs against the defendants for possession of suit land

measuring 1 kanals 4 marlas as well as 2 kanals 1 marla. The Courts have also ordered that the plaintiff who is also in illegal possession would vacate land measuring 13 marlas comprised in khasra No.2295/1 (min) which is in his illegal possession.

It may be noted here that as many as four demarcations have been carried out and the reports are consistent that defendants as well as plaintiff as noted above have encroached upon the land belonging to each other.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel appearing on behalf of the appellant submitted that plaintiff has failed to prove his title and, therefore, decree for possession could not be granted. He further submitted that demarcations have not been carried out in accordance with the procedures laid down in the High Court Rules and Orders and hence the judgments passed by the Courts below are liable to be set aside.

On the other hand, learned counsel for the respondents has pointed out that plaintiff in order to prove his title, has produced a copy of jamabandi-records of right and defendants have failed to lead cogent evidence to rebut the presumption of correctness of the records of right and hence, title of the plaintiff is proved. He further submitted that revenue officials have carried out the demarcations in accordance with the procedure laid down.

As regards first argument, it may be noted that the plaintiff-respondent filed this suit for possession on the basis of ownership. Plaintiff also alleged that before the suit was instituted, the land was got demarcated in which the defendants were found in illegal possession. Defendants contested

the suit and pleaded that there is no encroachment. The Courts framed issues on the basis of the pleadings of the parties and first issue was “whether the plaintiff is entitled to possession of the land as mentioned in the plaint”. In fact, ownership of the plaintiff was never seriously disputed. Hence, there is no substance in the first argument of learned counsel for the appellant.

As regards correctness of the demarcations, it may be noted that there are as many as four reports of the demarcations having been carried out which are consistent that there is encroachment. The procedure laid down in the High Court Rules and Orders has been followed. The demarcation was carried out after due notice to the parties. Sukhdev Singh, Kanungo has been examined as Court witness and has proved demarcations on 27.04.2013. Still further, demarcation report dated 20.06.2003 before the filing of the suit as also demarcation dated 27.04.2013 match with each other. Plaintiff-Gulzar Singh has also been found in possession of land measuring 13 marlas. In view of the aforesaid overwhelming evidence, there is no substance in the argument of learned counsel for the appellant.

Hence, there is no valid and cogent ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No