

In the High Court of Punjab and Haryana at Chandigarh

RSA No.8334 of 2018(O&M)

Date of Decision: 8.1.2019

Pawittar Singh

---Appellant

versus

Bachan Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. D.K.Sharma, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings of fact whereby suit for possession, mesne profits and permanent injunction in respect of land comprising khasra Nos. 62//1 and 62//10 was partly decreed by the trial court and the respondent-plaintiff is held entitle to possession of land encroached upon by the appellant-defendant, measuring 6 marla comprised in khasra Nos. 62//1 and 62//10. Further, the appellant is restrained from making further construction over the suit land and the respondent is held entitle to mesne profits @ Rs. 1000/- from the date of institution of suit till possession of suit property is delivered. The judgment and decree passed by the trial court came to be affirmed in appeal, filed by unsuccessful appellant-defendant.

Counsel for the appellant would urge that in the present case, there are three demarcation reports produced on record and all these three

reports record different findings. It is argued that before the Appellate Court, an application was filed for getting conducted demarcation afresh but the same was wrongly dismissed. It is prayed that the judgment and decree passed by the Appellate Court may be set aside and the matter be remitted to the Appellate Court for decision of the appeal afresh after getting conducted fresh demarcation to do substantial justice to the parties.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned.

Be that as it may, the respondent-plaintiff filed a suit for possession of land measuring 8 marla 7 sarsahi as per demarcation report and Naksha tawafat dated 8.1.2008, by removing construction and other appertures thereof. He also prayed for grant of mesne profits/compensation for use and unauthorized occupation of suit land and permanent injunction restraining the appellant from raising further construction or changing existing position of suit land.

Indisputably, during pendency of the suit, the trial court vide order dated 7.6.2011 appointed a local commission for conducting demarcation of the suit property and he submitted his report Ex. P6. Counsel has not disputed the factual observations of the trial court that the appellant-defendant did not file any objections against demarcation report submitted by the local commission Balwant Singh, Field Kanungo meaning thereby that the appellant had no grievance to express against the report submitted by the local commission wherein it has been recorded that the appellant is in illegal occupation of 6 marlas of suit land. Balwant Singh, Field Kanungo was examined as PW3 with an opportunity to the appellant to cross examine the witness with regard to correctness and validity of the

report prepared by him. Counsel has not pointed out any facts elicited in cross examination of Balwant Singh PW3 sufficient to substantiate plea of the appellant that the said report is not worthy of credence and reliance or another commission was required to be appointed by the court for conducting demarcation as prayed for before the first Appellate court. In the given circumstances, no error much less illegality can be noticed in the order passed by the Appellate Court rejecting plea of the appellant for appointment of another commission to conduct demarcation at the spot. In this view of the matter, the appellant cannot derive any advantage to his contention from the earlier demarcation reports nor can be heard to say that consistent findings recorded by the courts suffer from an error much less perversity that would call for intervention in regular second appeal.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine without any order as to costs.

(Rekha Mittal)
Judge

8.1.2019

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No