

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

RSA No.1028 of 2018(O&M)
Date of decision: 14.11.2019

Prem Singh

... Appellant

Versus

Kashmir Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Ravi Chadda, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 30.10.2014, and as the appeal preferred against the said decree failed and was dismissed on 27.07.2017, the appellant-defendant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for injunction restraining the defendant from interfering or encroaching upon the suit property, shown in red colour in the site plan appended with the plaint and marked with letters ABCD, that formed part of khasra No.90 (2K 16M), situated at Haler Janardhan, Tehsil Mukerian, District Hoshiarpur. And, in alternative, he also prayed for possession of the disputed property.

In brief, the case set out by him was that he was the owner of the suit property. Earlier plaintiff, his brothers and sisters had a residential house, which was in a dilapidated condition and collapsed owing to heavy

rains, and resultantly some waste/debris was lying in the suit property that was vacant. However, defendant having no right, title or interest, threatened to encroach upon the suit land. Even though plaintiff requested him to abstain from his nefarious activities, but to no avail. Thus, the suit and if the defendant was found to have encroached upon any portion of the suit property, its possession be restored to the plaintiff.

In the written statement filed by the defendant, it was pleaded, *inter alia*, that in fact he was owner of the land comprised in khasra No.91, wherein he had built a residential house after demolishing the old structure. Further, a wall was constructed by the plaintiff in between the properties of the plaintiff and the defendant. Therefore, there was no occasion for the defendant to have encroached upon any portion of the property owned by the plaintiff after scaling 16 feet high wall. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded: for it was a boundary dispute qua the properties owned by the parties, the report of the Local Commissioner, appointed by the court, was pivotal. In fact, the record revealed that on 15.04.2011, counsel for the defendant had suffered a statement that defendant had no objection if Local Commissioner was appointed to conduct an inquiry and submit a report as regards the encroachment caused by any of the parties. Accordingly, the Local Commissioner, who was a Kanungo, was appointed, who furnished a report on 14.03.2012. Both the parties were granted opportunities to file objections thereto. However, despite two opportunities none of the parties chose to file any objection to the report of the Local Commissioner. Accordingly, the

matter was posted for recording plaintiff's evidence. Therefore, the objections sought to be filed by the defendant subsequently without any order of the Court in this regard were liable to be ignored. Even otherwise, counsel for the defendant failed to point out if the report submitted by the Local Commissioner suffered from any conformity or defect. Not just that, even though the Commissioner was appointed with consensus of the learned counsel for the parties, yet defendant-Prem Singh declined to sign the memo of appearance prepared by the Local Commissioner. Even, the village Chowkidar reported that despite being duly served with a notice to remain present while demarcation was to be carried out at the spot, defendant refused to sign and chose to remain absent. All these facts cumulatively showed the conduct of the defendant and that he deliberately did not cooperate with the proceedings carried out by the Local Commissioner. Analysis of the report of the Local Commissioner (Ex.P3) showed that defendant had encroached upon a land measuring 11 marlas, comprised in khasra No.90, which concededly belonged to the plaintiff. Even the site plan prepared by the Local Commissioner proved the encroachment caused by the defendant upon the area owned by the plaintiff. As regards existence of a wall between the properties of the parties, the exact location of the said wall was crystallized in the report of the Local Commissioner, which showed that it was constructed after a portion of the property of the plaintiff was encroached upon. Further, besides the report of the Local Commissioner, plaintiff appeared as his own witness and duly proved his case. Not just that, his version was fully corroborated even by Vijay Kumar, Draftsman (PW2).

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at

were either contrary to the record or suffered from any material illegality.
No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

14.11.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO