

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5024 of 2019 (O&M)
Date of Decision: 24.1.2020

Shiv Saran and others

---Appellants

versus

Ram Niwas and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Manoj Kaushik, Advocate
for the appellants**

Rekha Mittal, J.

CM No. 14285-C of 2019 and
CM No. 89-C of 2020

Heard.

Allowed as prayed for. Annexures A-1 to A-6 are taken on
record, subject to just exceptions.

Main case

Counsel for the appellants contends that the Appellate Court got conducted demarcation of khasra Nos. 288 and 289 and in this regard, report dated 26.8.2018 was prepared and annexed as A-6 with CM No. 89-C of 2020. It is further argued that as per site plan appended with the demarcation report and tafawat report of nishandehi, appellant Shiv Saran is recorded to be in possession of area measuring 192.76 Gaj (yard) and Ram Bhagat-appellant to be in possession of 21.87 Gaj (yards) pertaining to khasra No. 289 and total thereof comes to approximately 214 yards but a decree has been passed against the appellants in respect of 10 marlas of land without adverting to demarcation prepared in pursuance of directions of the

court to which none of the parties raised objection.

Sh. Amit Kumar Jain, Advocate, filed vakalatnama on behalf of respondents No. 1 to 3-plaintiffs.

Counsel for the respondents-plaintiffs, on instructions, would state that respondents-plaintiffs have got no objection if the judgments and decrees passed by the courts are modified in terms of demarcation report dated 26.8.2018 and respondents are delivered possession of land measuring 192.76 yards of khasra No. 289 by Shiv Saran and 21.87 yards by Bhagat Ram, detailed in tafawat report of nishandehi as well in site plan appended to the aforesaid demarcation report.

Counsel for the appellants is not in a position to counter the proposal given by counsel for respondents-plaintiffs.

Counsel for the parties have not disputed that demarcation report dated 26.8.2018 was prepared in pursuance of order dated 8.8.2018 passed by the Court in Appeal. A relevant extract therefrom, reads as follows:-

“Reply to objection filed by respondents-plaintiffs. Heard. A bare perusal of report dated 7.5.2018 submitted by Field Kanungo, Pillu Khera would reveal that it is not possible for him to demarcate the suit land comprising in khasra No. 288 (0-19 or 1-18) and khasra No. 289 (2-1) in compliance of order dated 4.4.2018 passed by this Court. However, vide order dated 10.5.2018, Field Kanungo was directed to submit fresh report with regard to actual area of land occupied by both side party and in compliance thereof, Field Kanungo submitted his report on 30.5.2018, whereupon, objection has been filed by

respondents-plaintiffs. However, both reports dated 7.5.2018 and 25.5.2018 are found incomplete and improper. To determine real controversy involved in this appeal, this court finds justification in appointing Naib Tehsildar, Sub Tehsil Alewa, who with the assistance of Field Kanungo/Patwari, would demarcate suit land in question land comprising in **khasra No. 288 (0-19 or 1-18) and khasra No. 289 (2-1)** situated within the area of village Shamdo, Sub Tehsil Alewa. During course of demarcation, Local Commission shall prepare memo of presence of parties and rough site plan showing exact location of suit property. Further, both side party shall remain present at the time of demarcation. It is further made clear that appellants-defendants shall deposit entire expenses including fee etc. as applicable within a week in the office of Sub Tehsil Alewa against proper receipt and thereafter Local Commission along with assisting staff member like Kanungo etc. shall demarcate aforesaid property as earliest, 'as possible' preferably within 15 days. Thereafter, report in this regard be submitted to this Court on 31.8.2018 for further appropriate order. Accordingly, objection of respondents-plaintiffs stands disposed of. A copy of this order be sent to Naib Tehsildar, Sub Tehsil Alewa for its compliance. Appellants-defendants shall deposit requisite fee well in time. File be now put up on 31.8.2018 for awaiting report and for further proceedings.”

None of the parties raised any objection qua correctness of report dated 26.8.2018 and site plan appended thereto along with naksha

tafawat showing the extent of encroachment over khasra No. 289 by Shiv Saran and Bhagat Ram, parties to the suit. In the said report encroachment is also stated to have been made by Narayandutt and Bishan Lal who are not party to the suit. Taking into consideration the above, judgments and decrees passed by the courts are modified to the extent that respondents-plaintiffs are entitle to possession of area measuring 192.76 yards from Shiv Saran and 21.87 yards from Bhagat Ram, appellants (defendants therein).

In view of what has been discussed hereinbefore, the appeal stands disposed of with modification in the aforesaid terms.

(Rekha Mittal)
Judge

24.1.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No