

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

**RSA No.1134 of 2018(O&M)
Date of Order: 12.02.2020**

Rashpal Singh @ Pal Singh and another

..Appellants

Versus

Ram Saran Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sherry K.Singla, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

Plaintiffs-appellants, who are legal heirs of Ram Chand, the original plaintiff, have filed regular second appeal against the concurrent findings of fact arrived at by the courts below while dismissing the suit filed for possession with respect to land total measuring 32 karams measuring North-one karam, South- three Karams, whereas East & West: 16 karams each.

Plaintiff claims that he is owner of land comprised in khara no.153, khewat no.169, khatauni no.222, village Bhundia, Tehsil and District Jalandhar, and defendant has encroached upon the aforesaid area when his son Pal Singh alias Rashpal Singh was away to Doha Qatar. It was also claimed that defendant has constructed an intervening wall.

The defendant contested the case claiming that the wall in question was constructed 38 years ago and there is no encroachment by the defendant. It was also submitted that Pal Singh @ Rashpal Singh is very much in India for the last 12-13 years. Previous suit "Ramsaran Singh vs.

Ram Chand” was decreed. Judgment of trial court was also affirmed in appeal. It is claimed that there existed a passage in between the land comprised in khasra no.153.

Both the courts on appreciation of evidence have found that the plaintiff has failed to prove its case. It has been found that the case set up by the plaintiff is factually incorrect as the wall is in existence for the last 38 years. The court further found that the plaintiff has failed to prove alleged encroachment as is being claimed by the plaintiff. The court found that the plaintiff is relying upon a demarcation report dated 06.07.2000 Ex.PF, but the same cannot be considered as before demarcating the land no notice was sent to the defendant, although, it was sent to everyone else. The court further found that, although, the application was for demarcation of the land falling in khasra nos.153 and 75, however, the official did not demarcate the land comprised in khasra no.75.

This court has heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellants submitted that during the pendency of the first appeal, application was filed for appointing a Local Commissioner to carry out the demarcation. He, hence, submitted that the court should have allowed the application.

This court has considered the submission, however, find no substance therein.

It is the plaintiff, who had filed the suit alleging encroachment. The plaintiff has to prove his case. At the stage of first appeal, the first appellate court was justified in declining the prayer for appointing a revenue

official to demarcate the area. The plaintiff has further failed to prove that the land comprised in khasra no.153 was allotted during consolidation. The plaintiff failed to produce the record of the consolidation of holdings, namely, khatauni istemal, khatauni paimaish and naksha haqdarwar. Still further, in the judgment and decree dated 22.01.1999, it has been found that the wall 'AB' is existing since long and the plaintiff has actively concealed the fact while filing the present suit. The judgment in the previous suit has also been affirmed in appeal.

Keeping in view the aforesaid facts, no ground to interfere.

Dismissed.

12th February, 2020
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No