

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

107

**RSA-2953-2019 (O&M)
Date of decision: 25.07.2022**

Mahla Singh @ Mehal Singh and othersAppellants

Versus

Rajinderpal Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Jagdish Rai, Advocate as Legal Aid Counsel
for the appellants.

Mr. Prateek Pandit, Advocate
for the caveators/respondents.

MANJARI NEHRU KAUL, J. (ORAL)

The suit for possession of land measuring 7K-6M in Khasra No.63//13/1min North/4-0, 14/2/2/3-6, with area as under : East: 18 Karam; West: 18 Karam; North 40 Karam; Sourth:40 Karam, out of land comprised in Khewat/Khata No.268/265, Khatoni No.341, Khasra No.63//12/2/4-0, 63//13/1/6-15, 63//14/2/2/3-6, 63//18/8-0, 63//22/2/4-0, 63//23/1/6-0 situated in the revenue estate of village Booh, Tehsil and District Kapurthala (hereinafter referred to as 'the suit land') along with suit for permanent injunction instituted by the plaintiffs to restrain the defendants, their agents, servants etc. was decreed by the learned trial Court vide judgment and decree dated 30.01.2018. The appeal preferred by the defendants to impugn the judgment and decree of the trial Court was thereafter dismissed by the first appellate Court vide order dated 15.03.2019. The defendants are now before this Court in Regular Second Appeal.

Parties to the *lis* hereinafter shall be referred to by their

original positions in the suit.

The facts in brief as pleaded by the plaintiffs while filing the suit in question may be noticed as thus. The plaintiffs claimed that the suit land was owned by them and their names stood duly reflected in the revenue records. During their absence, defendant No.1 wrongly and illegally encroached upon some part of the suit land comprised in Khasra No.63//13/1min North/4-0, 14/2/2/3-6, kitte 2 total area 07 kanals 06 marlas. As soon as they learnt about illegal encroachment by the defendants, the plaintiffs requested them to vacate their land, however, the defendants asked the plaintiffs to get a demarcation carried out and in case it was found that some encroachment had indeed taken place, they would vacate it. An application was then moved to Tehsildar Kapurthala by plaintiff No.1 for conducting the demarcation. On 07.05.2015, demarcation was conducted by Kanungo and Halqa Patwari in the presence of both the parties and respectables of the village. During demarcation it was revealed that the land measuring 7K-6M in Khasra No.63//12/2/4-0, 63//13/1/6-15, 63//14/2/2/3-6, 63//18/8-0, 63//22/2/4-0, 63//23/1/6-0 had been wrongly and illegally encroached upon by the defendants. Resultantly, the plaintiffs again requested the defendants to vacate the encroached land but in vain. Hence, the suit in question was filed by the plaintiffs. In their written statement, the defendants denied having encroached upon the land of the plaintiffs and rather asserted that no application as claimed by plaintiff No.1, for demarcation of land in question, was moved by him much less demarcated as per the provisions of law by the Kanungo and Halqa Patwari. During trial, plaintiff Rajinderpal Singh examined

Tarlochan Singh as PW2, Lakhwinder Singh Kanungo Circle, Fattudhinga as PW3, Gopal Singh, Junior Assistant as PW4 besides examining himself as PW1. The plaintiffs also proved on record Ex.P1 i.e. copy of jamabandi, Ex.P2 i.e. demarcation report dated 07.05.2015, Ex.P4/A i.e. certified copy of application, Ex.P4/B i.e. certified copy of Naksha Tawafat and Ex.PX i.e. attested copy of intimation memo (Parcha Itlah). The defendants examined Bagicha Singh as DW1, Mahla Singh as DW2, Shinder Singh Sarpanch as DW3 and Kashmir Singh Narmbardar as DW4. Upon consideration of the matter in issue and the evidence led, both the Courts concurrently concluded that it stood proved that on an application moved by the plaintiffs, PW3 Lakhwinder Singh, Kanungo and PW2 Tarlochan Singh had visited the spot and prepared demarcation report (Ex.P2) and which in turn had been submitted by him to the Tehsildar concerned. As per the demarcation report (Ex.P2) it stood proved that the land of the plaintiffs had been encroached upon. Not only this, it was also proved on record that Notice (Ex.PX) was served qua the demarcation proceedings upon the defendants since it bore the signatures of defendants Mahla Singh, Bagicha Singh and left thumb impression of Kashmir Singh Nambardar.

Learned counsel for the appellants/defendants has vehemently argued that the disputed land was in fact forest land being in cultivating possession of the defendants. The defendants had been in possession of the suit land since the year 1970. However, the Courts below failed to appreciate this fact while passing the impugned judgment and decree. It was further argued that the Courts below also

failed to appreciate that the demarcation was not conducted as per the provisions of law but it was a paper exercise carried out by the revenue officials in connivance with the plaintiffs. He, thus, prayed for setting aside of the impugned judgement and decree.

I have heard learned counsel and perused the material on record.

The submissions made by learned counsel are devoid of any merit and deserve to be rejected outright. The factum of an application (Ex.P4/A) having been made by the plaintiffs to Tehsildar for carrying out demarcation stands duly proved. Not only this, it is also a matter of record that the defendants were duly informed about the date and time of the demarcation proceedings which finds corroboration from the fact that their respective signatures stand duly reflected in Ex.PX i.e Parcha Itlah. It also needs to be noticed here that the demarcation was carried out in the presence of both the parties and the defendants never raised or filed any objections to the demarcation report (Ex.P2) nor did they challenge it before any authority. In case as argued by learned counsel that the land was in the cultivating possession of the defendants since the year 1970, the least the defendants could have done was to lead some evidence before the trial Court in support of the same, however, admittedly no evidence was led either in the said regard or even to rebut Ex.P2 i.e. the demarcation report which as already observed stood duly proved on record by PW3 Lakhwinder Singh.

Upon being pointedly asked, learned counsel for the appellants/defendants miserably failed to refer to anything on record to

show that the conclusions arrived at by both the Courts below were either contrary to the record or suffered from any material illegality. No ground is thus made out to interfere with the concurrent findings recorded by both the Courts below. The appeal, being devoid of merit, is accordingly dismissed.

25.07.2022

(MANJARI NEHRU KAUL)

Vinay

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No