

ESA-7-2023 (O&M)
and another connected case 1 2023:PHHC:146710

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

1.ESA-7-2023 (O&M)

Azad Kaur and another
.....Appellants

Versus

Vishan Dass (deceased) through LRs and others
..Respondents

1.ESA-6-2023 (O&M)

Dilbag Singh through his LRs
.....Appellants

Versus

Vishan Dass (deceased) through LRs and others
..Respondents

Date of decision: 20.11.2023
Reserved on : 17.11.2023

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Alok Mittal, Advocate
 Mr. Abhishek Jindal, Advocate and
 Mr. Mithun, Advocate for the appellants
 in ESA-7-2023

 Mr. S.S.Dinarpur, Advocate for the appellants
 in ESA-6-2023

 Mr. Sumit Sangwan, Advocate for appellant-Sunita

 Mr. Abhilaksh Grover, Advocate for LR of
 respondent no.1

ANIL KSHETARPAL, J

1. With the consent of the learned counsel representing the parties, two connected Execution Second Appeal nos.6 and 7 of 2023, shall stand disposed of by a common judgment.

2. A decree for mandatory injunction directing the defendants to remove their encroachment from the land of the decree-holder was passed on 17.02.2003, by the learned Additional District Judge, Gurugram. The decree-holder is making an attempt for the last 10 years to get the aforesaid encroachments removed. It has been brought to the notice of the Court that during the pendency of these appeals, pursuant to the order passed by the Executing Court, the encroachments have been removed and the execution petition has been withdrawn as satisfied.

3. In these two appeals, except appellant no.2 in ESA-7-2023, are purchasers of the property during the pendency of the litigation and hence, they are governed by the rule of lis pendens.

4. The decree-holder filed a suit for issuing direction to the defendants to remove the encroachment over the land comprised in Rect.no.75 Khasra no.15 (6 kanals 16 marlas), 14/1/2 (2 kanals 12 marlas), 14/2 (1 kanal 16 marlas). The State of Haryana has acquired 3 marlas land from khasra no.15, (1 kanal 14 marlas) land from khasra no.14/1/2 and 10 marlas land from khasra no. 14/2.

5. The appellants claim that they are in possession of the property within the Abadi Deh (residential area) of the Village whereas it is the case of the decree-holder that the suit property is a part of their agricultural land comprised in the aforesaid khasra numbers. During the pendency of the appeal before the Additional District Judge, a Senior Revenue Official was appointed as a Local Commissioner. He, after demarcating the land on 16.01.2000, found that there is encroachment over the aforesaid khasra numbers. When the execution petition was filed, the court orally examined the aforesaid revenue official to verify the correctness of the report submitted by him. Thereafter, the Executing Court, once again, directed the revenue officials to demarcate the suit property with the help of DGPS Machine in 2022. The report of 2022 also confirmed the encroachment. Thus, both the courts dismissed the objection petition.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. Learned counsel representing the appellant in execution appeal no.6 submits that under the garb of the decree passed on 17.02.2003, the Executing Court has delivered the possession of their residential plots located in the Abadi Deh (residential area) of the village instead of agricultural land. He submits that on

16.01.2000 the revenue officials did not examine the lay out plan of the village and therefore, the report is not sustainable.

8. On the other hand, the learned counsel representing appellant no.1 in ESA-7-2023 submits that the court should order the fresh demarcation of the area. He submits that the house of the appellant has been demolished without giving her an opportunity to prove her case by leading evidence.

9. On the other hand, the learned counsel representing the appellant no.2 contends that appellant no.2 is not a purchaser lis pendens and the judgment and decree passed on 17.02.2023 is the judgment in personam.

10. On the other hand, the learned counsel representing the respondent-decree-holder contends that on two different occasions, demarcation of the suit land has been conducted and both the reports prove the encroachment. He submits that the objectors are trying to take possession of the land comprised in the aforesaid khasra numbers by taking a false plea. He submits that the decree-holder has no intention to take over the possession of the Abadi Deh located within the residential area of the village.

11. This Court has analyzed the arguments. In substance, the only issue which requires adjudication is, “whether the Executing Court has erred in demolishing the construction and removing the encroachment?” In other words, the identification of

the suit property is the pivotal issue involved in the facts of the present case. As already noticed, as many as two different revenue officials have not only demarcated the suit property but also identified the same. A careful perusal of the report dated 16.01.2000, proves that the revenue official while demarcating the suit property identified three cement pillars installed at the time of consolidation of the holdings in the village. After identifying those three pillars, he verified the location of the suit property after comparing it with the revenue record. In these circumstances, even if the layout plan was not available still his report cannot be ignored. Moreover, the revenue official has been summoned and orally examined by the Executing Court to verify the correctness of the report. Furthermore in 2022 even the Executing Court has once again directed the revenue official to demarcate the suit property. As per the aforesaid report, the encroachment on the part of the appellant has been confirmed. The other cases are required to be decided on preponderance of probabilities. On two different occasions, with a gap of 22 years, two revenue officials have demarcated the area. In the year 2022 the demarcation was carried out with a GPS based total station machine i.e Theodolite. This is a modern machine used for demarcation and it is linked to the global positioning satellite.

**ESA-7-2023 (O&M)
and another connected case**

6

2023:PHHC:146710

12. Learned counsel representing the appellant has failed to draw the attention of the Court to any error in the aforesaid reports. Once the property has been demarcated on two different occasions there is no occasion for this Court to order another demarcation. Hence, no ground to interfere is made out.

13. Dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

20.11.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)
JUDGE**