

2023:PHHC:152343
**125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-1455-2020 (O&M)
Date of decision: 30.11.2023

Bhangi Ram (deceased) through LRs

....Petitioner

Versus

Phool (deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Anuj Baliyan, Advocate for the petitioner

Mr. Sanjay Jain, Advocate for respondent no. 2 to 4

ANIL KSHETARPAL, J (Oral)

1. The petitioner before this Court has filed the first appeal against the judgment and decree passed by the trial court on 23.12.2016. Previously, late Sh.Bhangi Ram filed a suit for the grant of permanent injunction restraining the defendants from carving out a passage from his land. During the pendency of the previous suit, the passage was carved out, forcing the plaintiff to withdraw the suit and file a fresh one for the grant of relief of mandatory injunction. During the pendency of the suit, late Sh.Bhangi Ram filed an application on 06.01.2016, to the competent authority for demarcating the suit land. However, no demarcation was carried out. In the meantime, the suit was dismissed on 23.12.2016. After the decision of the trial court, demarcation was carried out on 07.02.2017. Late Sh.Bhangi Ram also died on

08.08.2016. On an application being filed for the impleadment of his legal representatives they brought on record. They filed an application for permission to lead additional evidence to produce the aforesaid demarcation report and prove the same. The same has been dismissed by the First Appellate Court on the ground that this fact was in the knowledge of the plaintiff and they have already tendered the demarcation report dated 26.07.2012, in the case before the trial court.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. Learned counsel representing the petitioner (legal representatives of late Sh.Bhangi Ram) contends that in this case, the pivotal issue, that requires consideration, is with respect to the encroachment of the land belonging to the petitioners by the defendants. Hence, the demarcation report would help the petitioners to prove their case. He submits that on 26.07.2012, the road was not carved out from the land of the petitioners. Hence, it is necessary to produce a fresh demarcation report that shows the present situation of the land.

3. On the other hand, the learned counsel representing the respondent submits that the petitioners were aware of the facts of the case and therefore, they should not be permitted to lead additional evidence. He submits that in the year 2013, late Sh.Bhangi Ram filed a writ petition for getting the area demarcated.

The High Court directed the Deputy Commissioner to look into the matter but the Deputy Commissioner found that late Sh.Bhangi Ram wanted to encroach upon the shamlat land.

4. This Court has considered the submissions made by the learned counsel representing the petitioner and perused the paperbook.

5. It is evident that the plaintiff filed an application before the competent authority for demarcating the suit land on 06.01.2016. However, the revenue authorities failed to take action for a period of nearly one year, resulting in the dismissal of the plaintiff's suit. After the decision of the suit, the demarcation was carried out. Before the First Appellate Court, an application for permission to lead evidence has been dismissed, by taking a narrow view. The courts are expected to take a holistic view of the matter, particularly when the plaintiff has been making all efforts to get the suit land demarcated. Not only the application was filed by the plaintiffs on 06.01.2016, requesting the authorities to demarcate the area but they also filed a writ petition by invoking the extraordinary jurisdiction of the High Court. Even after the direction of the High Court, the Deputy Commissioner failed to demarcate the area within the appropriate time period. The demarcation report shall help the Court to decide the case effectively and fairly.

6. Keeping in view the aforesaid discussion, the impugned order is set aside. The application filed by the petitioners is allowed. They shall be permitted to examine the revenue officials to prove the demarcation report.

7. The revision petition stands allowed.

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

30.11.2023

rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No