

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 342 of 2020 (O&M)****Date of Decision: 21.09.2023**

Ajit Singh

... Appellant(s)

Versus

Karnail Singh (Since Deceased) through his Legal Representatives

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Krishan Kanha, Advocate
for Mr. Narinder S. Lucky, Advocate
for the appellant(s).

Anil Kshetarpal, J.**CM-889-C-2020**

1. For the reasons stated in the application, the same is allowed and delay of 18 days in refiling the appeal is condoned.

RSA-342-2020

2. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.***

3. The correctness of the concurrent findings of facts, arrived at by both the Courts below, is assailed in this second appeal filed by the plaintiff.

4. The plaintiff's suit for the grant of decree of possession with respect to the land measuring 1½ marlas by removing the temporary shed

raised by the defendant, has been dismissed by both the Courts below. The plaintiff claims to be the owner of the property on the basis of the alleged sale deed executed by Sh.Didar Singh and Sh.Bakshish Singh on 18.02.1999. On the other hand, the defendants, while contesting the suit claimed that they purchased the land measuring 1 kanal in the year 1963 through a registered sale deed and they are in possession thereof after raising construction. In order to demarcate the area, a Local Commissioner was appointed. The Local Commissioner reported that the defendants have not encroached upon the plaintiff's land. The suit was dismissed. However, the First Appellate Court remanded the case back to the trial Court for appointment of Local Commissioner afresh and thereafter, to decide the case. Again, a Local Commissioner was appointed, who demarcated the area and found that the plaintiff has failed to prove any encroachment by the defendants. It has also come on the record that though, the defendants have purchased the land measuring 1 kanal which is equivalent to 20 marlas, however, they are in possession of the land measuring 14 marlas only. Thus, both the Courts below dismissed the plaintiff's suit.

5. The learned counsel representing the appellant submits that the Local Commissioner did not start demarcation from the pucca point and has not examined the revenue record before demarcating the area.

6. This Court has considered the submissions. After the permission from the First Appellate Court, a second demarcation was carried out by a senior revenue official. He has established three points in three different directions in order to comply with the instructions in this regard.

The demarcation has already been carried out on the earlier two different

Regular Second Appeal No. 342 of 2020 (O&M)

occasions. Moreover, the area in possession of the defendants is also less than the area purchased by them. Furthermore, the appellant has failed to produce any evidence to prove the title of his vendor. It is well settled that the plaintiff is to stand on his own legs. However, he fails to establish any encroachment.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 21, 2023
“DK”

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