

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 83 of 2020 (O&M)****Date of Decision: 14.09.2023**

Rajesh

... Appellant(s)

Versus

Rajpal

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Chanderhas Yadav, Advocate
for the appellant(s).

Anil Kshetarpal, J.**CM-505-C-2020**

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

RSA-83-2020

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. The plaintiff's suit for the grant of decree of possession with respect to the land measuring 1 kanal located in the abadi of village Kasni, Tehsil and

District Jhajja, has been dismissed by both the Courts below.

4. In substance, the appellant is owner of the plot No. 356, whereas the respondent is the owner of the plot No. 357. It has come on record that previously, the appellant's brother filed a suit for the grant of permanent injunction wherein two Local Commissioners were appointed. As per the report of one Local Commissioner, there was no encroachment. However, the brother of the appellant withdrew the suit. Subsequently, the plaintiff filed the suit.

5. In this suit also, a Local Commissioner was appointed, however, both the Courts below have found that the demarcation was carried out in the absence of the defendant as he was posted in the State of Uttar Pradesh and his signatures on the notice are different from that on the written statement and vakalatnama.

6. It has also come on record that the appellant, while appearing in evidence, has stated that his father constructed a wall in between the two adjoining plots which continues to exist for the last 30 years.

7. Thus, on preponderance of evidence, both the Courts below have dismissed the suit.

8. The learned counsel representing the appellant contends that the plaintiff has stated that his father had left 7 feet area outside the wall to tie cattles. The learned counsel submits that the report of the Local Commissioner in another case could not be read in evidence.

9. This Court has considered the submissions. On a Court question, the learned counsel representing the appellant has fairly admits that the plaintiff, while filing the suit, has not pleaded that his father had left 7 feet space outside the boundary wall. Hence, this plea is not acceptable

particularly when it is not a part of the pleadings.

10. The appellant has come to the Court. He has to stand on his own legs and establish that the defendant has encroached upon the area. The report of the Local Commissioner, in this suit, has correctly been discarded by both the Courts below on the ground that the same was carried out without notice to the defendant. Hence, the appellant was required to prove encroachment. It is not the case of the appellant that the aforesaid wall constructed by his father was ever demolished by the defendant.

11. 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.

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

(Anil Kshetarpal)
Judge

September 14, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No