

[1]

CM No. 11975-C of 2023 in/and
RSA No. 3345 of 2023 (O&M)

Neutral Citation No. 2023:PHHC:135996

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

CM No. 11975-C of 2023 in/and
RSA No. 3345 of 2023 (O&M)
Date of Decision : 18.10.2023

Pritpal Singh through his attorney
and father Santokh Singh

...Appellant / defendant

Versus

Charanjit Kaur through Special Power of
Attorney Holder Sarabjit Singh

...Respondent / plaintiff

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Paramjit Singh Jammu, Advocate
for the appellant-defendant.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments & decrees dated 08.07.2022 & 25.07.2023 passed by the Courts below, whereby a suit for possession filed at the instance of respondent-plaintiff (Charanjit Kaur), was decreed; as also the first appeal filed by the appellant-defendant (Pritpal Singh) was dismissed.

[2] In the present case, the respondent-plaintiff, claiming herself to be owner of the suit property of the land measuring 48 ft. X 11 ft. part and parcel of khasra number 28//21/2(2-12) and 28/22/1(5-8) and khata No. 1086/1074, khatauni No. 1235, situated in Village Ranipur Kamboan,

Tehsil Phagwara, District Kapurthala, filed a suit for possession alleging encroachment of 8 marlas of land by the appellant-defendant. It was further pleaded that though 6 marla of encroachment was vacated by the appellant-defendant, whereas 2 marla was retained, thus, compelling the respondent-plaintiff to file the suit.

[3] Upon notice, the appellant-defendant appeared and contested the claim set up in the plaint, while stating that there was no encroachment over the land owned by the respondent-plaintiff and the demarcation report relied upon in the plaint was in violation of the rules and procedure.

[4] After appreciating the evidence on record as well as after hearing learned counsel for the parties, the Trial Court, vide judgment and decree dated 08.07.2022, decreed the suit in favour of respondent-plaintiff, while relying upon the demarcation report dated 31.10.2017 (Ex. P3), which was proved on record by Gurdeep Singh, Kanungo, Revenue Office, Phagwara, who appeared as PW-1.

[5] Dissatisfied with the judgment and decree dated 08.07.2022 passed by the Trial Court, the appellant-defendant filed first appeal, however, the same was also dismissed vide judgment and decree dated 25.07.2023 by the Court of District Judge, Kapurthala.

[6] Impugning the aforementioned judgments and decrees dated 08.07.2022 & 25.07.2023 passed by the Courts below, learned counsel for the appellant-defendant (Pritpal Singh) submits that the Courts below went wrong while relying upon the demarcation report dated 31.10.2017 (Ex. P3), which was beyond pleadings and was never set up in the plaint.

He further points out that the said demarcation was never carried out in the presence of appellant-defendant and thus, the same could not have been made basis for granting relief in favour of the respondent-plaintiff.

Learned counsel also submits that Sarabjit Singh, who appeared as PW-2, was appointed as sub-power of attorney by the husband of respondent-plaintiff, namely Pritam Singh, who was her Special Power of Attorney and thus, was not even competent to appear as a witness. No other argument has been raised.

[7] After hearing learned counsel for the appellant and gone through the paper book, I am unable to find merits in the submissions made on behalf of the appellant.

[8] As regards the plea raised on behalf of the appellant-defendant to the effect that the demarcation report dated 31.10.2017 (Ex.P3) could not have been relied upon by trial Court, while decreeing the suit for the reason that the appellant-defendant was never put to notice before carrying out the said demarcation, is wholly misplaced. A perusal of cross-examination of PW-1, namely, Gurdeep Singh, Kanungo, clearly shows that a notice was served upon the appellant-defendant, but he chose not to appear at the time of demarcation, whereas his father remained there while demarcation was being carried out. No suggestion whatsoever was put to the said Gurdeep Singh (PW-1) to the said portion of his cross-examination, the same having thus gone unrebutted. Furthermore, the demarcation report dated 31.10.2017 (Ex.P3) cannot be discarded for want of pleadings to that effect in the plaint. In fact, the cause of action in the plaint was based on unauthorized occupation of the appellant-

defendant over the suit property, which had to be proved by way of leading evidence, was duly pleaded therein. The demarcation report dated 31.10.2017 (Ex.P3) being a piece of evidence was thus not required to be pleaded in the plaint as per the settled canons of law.

[9] Lastly, the argument raised on behalf of the appellant-defendant that Sarabjit Singh (PW-2) was not competent to appear as a witness in support of the plaint, is also not made out. In the facts and circumstances of the present case, the said witness was not required to prove any transaction regarding which personal knowledge could be attributed to the respondent-plaintiff herself. Moreover, Sarabjit Singh (PW-2) was appointed as sub-attorney by the Special Power of Attorney, namely, Pritam Singh, i.e. the husband of respondent-plaintiff herself, and thus, his deposition to prove the contents of the plaint only could not be discarded.

[10] In view of the detailed discussion made here-in-above, finding no illegality or perversity with the judgments passed by the Courts below, thus being no misreading of pleadings and the evidence available on record, the present appeal is **dismissed** being devoid of merits.

[11] Pending application(s), if any, shall also stand disposed off.

October 18, 2023
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No