

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

136

CR-7387-2023

Date of Decision: 07.12.2023.

BRIJ BHAN

...PETITIONER

VS

RAVISH TREHAN

...RESPONDENT

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay K. Jindal, Senior Advocate with
Mr. Aditya Jain, Advocate,
Mr. Arunesh Grover, Advocate,
Mr. Akshay Jindal, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

1. The petitioner before this Court was a defendant. The plaintiff filed a suit for possession with a consequential relief for permanent injunction. He claims that the defendant has encroached upon his land. In the plaint it was asserted that he had got a land demarcated and the defendant was found to have encroached his property.

2. During the trial of the case before the Court of the first instance, the plaintiff filed an application with a request to the Court to appoint a Local Commissioner which was dismissed on 27.11.2018. The petitioner had also filed a revision petition to challenge the correctness of the aforesaid order, but was dismissed. The plaintiff in order to prove his case had produced a demarcation report Ex.PW-4/C and site plan Ex.PW-4/D, however, his suit was dismissed. The First Appellate Court also found that

the demarcation report Ex.Pw-4/C was not proper because three permanent points in and around the suit property were not taken into consideration before conducting the demarcation. Thus, the Court has directed the revenue official to re-conduct the demarcation with the help of the global satellite based system.

3. The correctness of the aforesaid order has been challenged in this revision petition. Learned Senior counsel representing petitioner, while referring to assertions made in para 3 and 4 of the plaint, submits that the plaintiff did not produce the demarcation report which was made the sole basis of filing the suit. He submits that the plaintiff's application for demarcation of the property, filed before the trial Court, was dismissed. He further submits that the plaintiff was required to prove his own case.

4. In the cases of alleged encroachment the main issue that requires adjudication is the extent of encroachment, if any. To determine the aforesaid encroachment, the Court is expected to rely upon the demarcation report of the site. In this case, the First Appellate Court has held that demarcation as held under the demarcation report Ex.PW-4/C has not been properly conducted.

5. In such circumstances, the First Appellate Court, in exercise of its discretion, has issued directions to demarcate the site again.

6. In such circumstances, it cannot be said that the Court is collecting evidence or is filling up the lacuna left by the party. No doubt an application was filed before the trial Court by the plaintiff which was dismissed. However, that itself would not be sufficient to hold that the Appellate Court has not exercised its jurisdiction, in accordance with law.

7. Hence, no ground to interfere in this revision is made out, however, if the petitioner prays for an opportunity to rebut the report of the Local Commissioner, the same shall be considered by the First Appellate Court, in accordance with law.
8. The present petition is dismissed, accordingly.

(ANIL KSHETARPAL)
JUDGE

07.12.2023
pry

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