

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 1781 of 1990 (O&M)****Date of Decision: 29.02.2024**

Bhim Singh and Others

... Appellant(s)

Versus

Mange Ram and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Aman Priya Jain, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and 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*.

2. In this regular second appeal, the defendants assail the correctness of the concurrent findings of facts arrived at by both the Courts below while decreeing the plaintiff's suit for grant of decree of permanent injunction against his forcible dispossession.

3. Both the Courts below have relied upon the following three circumstances:-

- i) The Local Commissioner, namely Sh.Jag Ram, Kanungo,
a senior revenue official, after carrying out demarcation,

has reported that the suit property is comprised in khasra No. 388.

- ii) DW.1-Bhim Singh stated that Amar Singh is a supplier of the stones used for construction and that he has supplied 12 truck loads of stones to the plaintiff (respondent No.1 herein) which are stored in the plot in question.
- iii) The site plan produced and proved by the defendants itself proves that the disputed site is a part of khasra No. 388.

4. Heard the learned counsel representing the appellants at length and with his able assistance, perused the paper-book along with the record of both the Courts below which is available in the digital form.

5. The learned counsel representing the appellants contends that the report of the Local Commissioner is not admissible in evidence as the demarcation was not carried out from three pucca (permanent) points. He submits that in the absence of pucca points, no demarcation is possible. He further submits that the plaintiff has failed to prove his right, title or interest in the property. Therefore, the plaintiff is not entitled to injunction as he has failed to prove his case as the plaintiff has to stand on his own legs.

6. This Court has considered the submissions of the learned counsel representing the appellants.

7. Ex.P1 is the report of the Local commissioner, namely Sh.Jag Ram, Kanungo. A perusal of the report shows that the demarcation was carried out from points A, B and C as depicted in the layout plan. Thus, it is evident that the demarcation was carried out from three different directions

and the correctness of starting points A, B and C was not disputed. The demarcation has taken place in the presence of the learned counsel representing the defendants, however, he never took any objection in this regard. It is correct that efforts must be made to locate pucca point in order to demarcate the disputed property. However, if the pucca points (pillars installed by the Authority) are not available, the revenue official is entitled to fix three points in three different directions after demarcating the surrounding areas. The correctness of these three points shall have to be verified by the revenue official which are located in three different directions. The Local Commissioner can, then, proceed to demarcate the area. In this case, in the presence of the learned counsel representing the appellants (defendants) the demarcation took place and the learned counsel did not object to the correctness of three points which were fixed. Furthermore, it has come in evidence that the plaintiff has stored 12 truck loads of stones used for construction activity. Amar Singh, supplier of the stones, has not been examined, however, PW.3-Jagram has stated that the stones were transported in his truck. Even DW.1-Bhim Singh admits that 4/5 truck loads of stones are lying in the plot. The learned counsel representing the appellants submits that PW.3-Jag Ram is the interested witness as he is known to the plaintiff.

8. As already noticed, the plaintiff has been granted limited injunction against his forcible dispossession. DW.1-Bhim Singh admits that 4/5 truck loads of stones are lying in the site in dispute. Thus, the statement of PW.3-jag Ram and the case of the plaintiffs stands corroborated by DW.1-

Bhim Singh.

Regular Second Appeal No. 1781 of 1990 (O&M)

9. Moreover, the defendants have produced the site plan (Ex.D1) in which the disputed plot is reflected to be comprised in khasra No. 388. The plaintiff has proved his case to the satisfaction of the Courts. Hence, both the Courts below have decreed the suit.
10. 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.
11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 29, 2024
“DK”

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