

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

1. RSA-2058-1990
Date of decision: 27.02.2024

HARJINDER SINGH AND OTHERS ..Appellants

Versus

KRISHAN LAL AND ANR. ..Respondents

2. RSA-2425-1990(O&M)

PARSHADI SINGH AND ANR. ..Appellants

Versus

VIJAY KUMAR LAL AND OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate
with Mr. Varun Parkash, Advocate
for the appellants.

None for the respondents.

ANIL KSHETARPAL, J.(Oral)

1. In these regular second appeals, the respondents despite service of notice have not entered appearance.
2. This Bench has heard the learned counsel representing the appellants at length and with their able assistance perused the paperbook along with the requisitioned lower Court record.
3. Two connected regular second appeals have been filed by the defendants to challenge the correctness of the judgment and decree passed by the First Appellate Court.

4. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

5. Sh. Vijay Kumar was owner of the disputed land comprised in Khasra Nos.1234 to 1236, which was sold in favour of the plaintiffs Sh. Krishan Lal and Sh. Udai Bhan sons of Sh. Ghasita Ram, by registered sale deed dated 05.05.1966. The plaintiffs filed his suit for possession claiming that the defendants have forcibly encroached upon 39 square yards plot. The defendants while contesting the suit claimed that they are owner of land comprised in Khasra No.1237 and they have not encroached upon any part of the plaintiffs property. They also claimed uninterrupted possession from 1960. In order to demarcate the property, local commissioner, Sadar Kanungo was appointed, who after demarcating the area submitted his report to the effect that the defendants have encroached upon the plaintiffs plot, however, the trial Court dismissed the suit on the ground that the local commissioner has failed to determine the *pacca* points. In first appeal, the Appellate Court re examined the matter. After thoroughly studying the report of local commissioner, the Appellate Court came to a conclusion that the local commissioner verified the boundaries of various other khasra numbers and *identified* points for starting measurement from three different directions. Ultimately, a detailed report Ex.PW1/B and PW1/C was submitted.

6. This demarcation was carried out in presence of the learned counsel representing the defendants and he has signed the report. Thus, the Court came to the conclusion that the trial Court erred in discarding the report.

7. The learned counsel representing the appellants submits that in absence of *pacca* points, the demarcation of the property was not appropriate and therefore, the Appellate Court has erred in reversing the judgment of the trial Court.
8. This Court has considered the submissions of the learned counsel representing the appellants.
9. The First Appellate Court after perusing the report, has recorded the following findings:-

“21. I have perused the report of Local Commissioner Ex. PW1/B Ex. PW1/C where it is abundantly clear that he inspected and taken the measurement in the presence of the parties. Even he obtained the signatures of Sh.S.C. Gupta, Advocate counsel for respondents on this report It is clear from his report Ex. PW1/B that even he has verified the jarb before measuring the land. A bare perusal of the report further shows that before the measurement he measured three other khasra numbers and fixed the points of the measurement. So much so he verified the area of other Khasra No.1234, 1233, 1241 etc. and he fixed the points ABCD It may also be added that no objection, about the points or measurements, was ever raised, by the counsel for the respondents, who was present at the spot. After taking the measurement correctly local commissioner submitted his detailed report Ex. PW1/B and PW1/C and identified the encroachment in Khasra No. 1236 as under :-

East	West	North	South	Area in Biswansi as B. B. B.
4	4 ½	1 ½	1	0. 0. 5.
	4 (1+ 3/2)			
	2			

22. The report Ex. PW1/B, Ex.PW1/C is further corroborated by Akash Shajra Kishatwar Ex.PW1/D and the statement of Shanti Narain Naib Sadar Kanungo, Gurgaon PW1. He categorically stated that he measured the disputed property, which is the area of village Gurgaon and is lying vacant. He started the measurements from khasra No. 1246 and from the corner of the school building. He was having with him Shajra Kishtwar and field book. I have gone through the entire

report of the local commissioner and his statement and I am of the view that no fault can be found with his report. It may also be added that respondents have not produced any rebuttal evidence to the evidence of report of Local Commissioner. It is now well settled that in the absence of any rebuttal evidence in this regard, report of local commissioner should be accepted. In this connection reliance can well be placed on a judgment in Jawahar Lal Vs. Manga Ram reported in 1988(2) RLR 264. Appellants have produced the best possible evidence in the shape of local commissioner to identify the land.

23. This case can be viewed from other angle also. The positive case of the respondents is that the land in dispute is a part of Khasra No.1237 which they have purchased vide registered sale deed Ex.DW2/A dated 6.4.60. A bare perusal of the sale deed EX.DW2/A demonstrate that they have purchased two plots one (60"×40') 50 foot by 40 foot and another 30 foot by 26 foot. This stand of the respondent is totally contradicted by their own site plan Ex.DW4/A. In which more area has beer shown, then the one which they have purchased vide registered sale deed Ex.DW2/A. It leads to only one conclusion that respondents have encroached upon some area of other khasra number. It may also be added that even respondent Harjinder Singh DW3 have stated on oath that his mother purchased two plots one 60 by 40 feet and other 26 foot by 30 foot. So the statement of DW-3 and site plan Ex.DW4/1 do not reconcile with the sale deed Ex.DW2/A. This clearly shows that they have encroached upon more area then they have purchased vide sale deed Ed. DW2/A. A bare perusal of Aksh Shajra Ex.PX/4 (which is at page 165 of the trial court clearly demonstrates that Khasra No. 1237 is towards north of Khasra No.1236 and which supports the site plan Ex. PW2/A. In this view of the matter it is proved on record that respondents have encroached upon the area measuring 0 Bigha 0 Biswa 5 Biswansi, as indicated in the report of Local commissioner EX. PW1/C and Aksh Tatima Shajra Ex. PW1/E.”

10. It is evident that the local commissioner is a revenue official having sufficient experience and in absence of *pacca* points, it is permissible to determine the points for starting demarcation after demarcating the surrounding area from three different directions. Moreover, the defendants

have not produced any evidence to counter the aforesaid report of the local commissioner.

- 11. Keeping in view the aforesaid facts, no ground to interfere is made out.
- 12. Dismissed accordingly.
- 13. All the pending miscellaneous applications, if any, are also disposed of.

February 27th, 2024
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(ANIL KSHETARPAL)
JUDGE

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