



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 24.10.2024

..... Appellant/plaintiff

Jagan & ors.

..... Respondents/defendants

Mr. Rajesh Lamba, Advocate
for respondent No.1.

1 Plaintiff is in second appeal. For convenience parties
hereinafter are referred to by their original position in the suit i.e. the
appellant as plaintiff and respondent No.1 as defendant No.1.

2 Plaintiff filed suit for declaration, possession and for consequential relief for permanent injunction. Plaintiff claims himself to be owner in possession of a property as mentioned in the head note of the plaint along with proforma defendant No.4. The pleaded case was that the land of defendants adjoins the suit property. Taking benefit defendants have encroached upon part of the Kill No.120. Reliance was being placed upon demarcation report exhibit P-2 and P-5.



3 Suit was contested by defendant No.1 who denied any encroachment and it was claimed that eastern side of the plots have been wrongly shown to be 16 karam in the Aksh Sizra and Field Book whereas on the spot they measured 14-3/7 karam. Suit filed by the plaintiff was put to trial framing following issues :-

- “1. Whether the plaintiff is entitled to a decree for declaration that plaintiff and proforma defendants are owner in possession of the suit property and revenue entries are liable to be rectified? OPP*
- 2. Whether the plaintiff is entitled to a decree for possession of the encroached portion? OPP*
- 3. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendants from interfering in his possession over the suit property? OPP*
- 4. Whether the suit of the plaintiff is not maintainable? OPD*
- 5. Whether plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 6. Relief.”*

4 While deciding issue nos. 1 to 3 Trial Court relied upon demarcation report Ex.P-5 and decreed the suit filed by the plaintiff holding him entitled to possession over the land encroached upon by the defendants in terms of the demarcation report.

5 Defendant No.1 preferred appeal. Lower Appellate Court reversed finding on issues No.1 to 3 holding that since the author of the demarcation report Sadar Kanungo, Virender Singh who appeared as PW3 admitted that no notice in writing was issued to defendants before



demarcation of the said land, the demarcation report relied upon by the plaintiff cannot be accepted and made basis of the finding. Lower Appellate Court further held that the demarcation report proved by the defendants i.e. Ex.DW3/B has been totally ignored by the Trial Court. Reversing finding on issues No.1 to 3 Lower Appellate Court dismissed the suit filed by the plaintiff.

6 Learned counsel for the plaintiff submits that the findings recorded by the Lower Appellate Court are perverse. He submits that from report Ex.P5 it is evident that Raman Lal son of defendant No.1-Jagan has signed the demarcation report and thus it cannot be said that the same was conducted at the back of the defendants. He further submits that from statement of PW3 Virender Singh, Sadar Kanungo it is evident that the demarcation was conducted on the application made by defendant No.1-Jagan and thus findings recorded by the Lower Appellate Court need to be reversed and the appeal needs to be accepted.

7 *Per contra*, Mr. Lamba, Advocate submits that there is no record with respect to any application moved by Jagan seeking demarcation of land. DW1 specifically stated in his cross examination that the signatures of Raman on the demarcation report are forged and fabricated yet no evidence was led by the plaintiff in rebuttal to prove the signatures of Raman.

8 I have heard learned counsel for the parties and have carefully gone through records of the case.



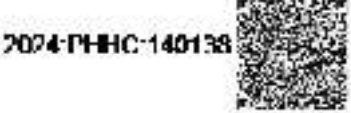
9 Keeping in view the fact that ownership of Killa No.120 admeasuring 1 kanal 2 marlas of the plaintiff is not in dispute. The short issue that arises before this Court is :-

Whether plaintiff succeeded in proving encroachment at the hands of defendants or not?

10 The only evidence that has come on record is in form of demarcation report ex.P-5. In order to prove the same plaintiff examined PW3 Virender Singh, Sadar Kanungo. Virender Singh, Sadar Kanungo explicitly, unambiguously and clearly admitted that the demarcation was conducted without giving any notice to the defendants.

11 In view of above this Court finds that the said demarcation report carried out at the back of defendants could not have been relied upon by the Trial Court and the Appellate Court has rightly reversed the findings on issues No.1 to 3. So far as plea raised by learned counsel for the plaintiff with respect to signatures of son of defendant No.1 on the demarcation report is concerned, once defendant No.1 while appearing as DW-1 categorically denied the signatures it was incumbent upon the plaintiff to prove the same.

12 Learned counsel for the plaintiff is not in a position to dispute that no such evidence was led to prove the signatures of Raman over the demarcation report.



13 In view of above, finding no merits in the present appeal the same is dismissed.

24.10.2024
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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