

112.

2024:PHHC:031753

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.573 of 2020 (O&M)  
Date of decision: 05.03.2024

Jagjeet .... Appellant

Versus

Mahender Singh .... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ajay Vijrania, Advocate, for the appellant.

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GURBIR SINGH, J.

1. Present regular second appeal has been filed against the judgment and decree dated 15.10.2019 passed by learned Additional District Judge, Charkhi Dadri, whereby the appeal filed by the plaintiff, appellant herein, against the judgment and decree dated 12.03.2018 passed by learned Civil Judge (Junior Division), Charkhi Dadri, has been dismissed.
2. Briefly stated, the appellant-plaintiff (hereinafter called, "plaintiff") filed a suit for possession of the suit property comprised in Khewat No.83//68, Khatoni No.108, Khasra No.106//21/3/(2-13), as per jamabandi for the year 2001-02 situated in the revenue estate of Village Rawaldhi, Tehsil Charkhi Dadri, District Bhiwani, with the averments that he is the owner of suit property and the respondent-defendant (hereinafter

called, “defendant”) who is his brother as co-sharer, is in unauthorized possession over the suit property as per demarcation report dated 28.09.2013 got conducted by the plaintiff.

2.2 Upon notice, defendant appeared and filed written statement by contending that he has not encroached upon the suit property and the demarcation report of the plaintiff is wrong.

2.3 Issues were framed. To prove the case, the plaintiff examined PW1-Raghubir Parsad, retired Kanungo, who proved the demarcation report dated 28.09.2013 (Exs.P1 to P5); PW3-Satish, who supported the case of the plaintiff and the plaintiff himself stepped into the witness box as PW4. On the other hand, defendant-Mahender Singh examined himself as DW1; Shokat Ali, retired Kanungo as PW2, who proved the demarcation report Ex.D3/8 to D3/F; Gunpal, retired Naib Tehsildar as DW3, who proved the demarcation report Exs.DW3/8 to DW3/E. The respective parties also tendered some documents in support of their case.

2.4 After appreciating the evidence on record, the trial Court dismissed the suit and the appeal filed against thereof was also dismissed. Aggrieved, plaintiff has approached this Court.

3. Learned counsel for the appellant-plaintiff submits that the appellant got demarcated the property, in dispute, and the report of the Local Commissioner dated 28.09.2013 is proved as Exs.P1 to P5, but the courts below ignored said report. On the other hand, respondent-defendant

has relied upon report dated 04.08.2015, Exs.D1 and D2, which is not as per spot. Appellant was not present at the time of said demarcation.

4. I have heard the submissions of learned counsel for the appellant and have gone through the file.

5. The suit of the appellant-plaintiff is based on demarcation report dated 28.09.2013 Ex.P4, vide which, the respondent-defendant was found in unauthorized possession over the suit property. The learned appellate Court, while ignoring said demarcation report Ex.P4, has held that it is PW1-Raghubir Parsad, who conducted said demarcation and in his cross-examination, he had deposed that he never conducted demarcation from any surveyor stone. Neither he searched for surveyor stone nor same was found present at the spot. He never searched and determined three pukhta points at spot for conducting demarcation. Since the said report was against the instructions issued by the Financial Commissioner and also against the rules and order of Punjab and Haryana High Court, so, both the courts below have rightly ignored the said report. DW3 Gunpal (retired) Naib Tehsildar was appointed as Local Commissioner by the Court for getting demarcation conducted and said demarcation has been conducted in the presence of both the parties. DW3 and DW2-Shokat Ali (retired) Kanungo proved the demarcation report and its record as Ex.DW3/B to Ex.DW3/F.

6. Since the appellant-plaintiff failed to prove that the respondent-defendant has encroached any part of land owned by him, the

courts below have rightly dismissed the suit of the plaintiff. There is neither any misreading of evidence nor any substantial question of law is involved in the present appeal. The same is without any merit and is dismissed in limini accordingly.

7. Pending application, if any, shall also stand disposed of.

**(GURBIR SINGH)**  
**JUDGE**

**March 05, 2024**  
sanjeev

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