

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****111****RSA-1040-2018 (O&M)****Date of decision: 04.09.2025****Ram Kumar****...Appellant(s)****Vs.****Chander Bhan and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Raman Chawla, Advocate for the appellant.

NIDHI GUPTA, J.

Present Regular Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the appellant for possession, has been dismissed by both the Courts below.

2. It is *inter alia* submitted by learned counsel for the appellant that suit of the plaintiff has been dismissed by both the Courts below on the basis of old reports of the Local Commissioner without considering latest report dated 07.12.2013 (Anexure A-1) of the Local Commissioner appointed by Court order; wherein it was clearly recorded that the encroachment was done by the defendant of total area of 42.77 sq.yds. It is further submitted that in dismissing the suit of the plaintiff, the Courts below have not considered the statement of PW5 and PW3 Hawa Singh Kanungo and rebuttal evidence led by the plaintiff. Rather no findings



were given by both the Courts below in respect of evidence of PW3 and PW5.

3. It is further submitted by learned counsel for the appellant that the Ld. Trial Court has admitted the report of Kanungo qua encroachment of 43 sq. yards on plot. But it has declined the same without any cogent reason. The Demarcation Report dated 10.2.2006 of respondent No. 1 is nowhere on record, rather he has not produced any documentary evidence in support of their contention. There is no evidence that in year 2005 Chander Bhan S/o Ramji Lal, Vijay Pal S/o Jawahara were co-sharer in plot No. 719 and they had given consent for raising the construction in year 2006 to the respondent No. 1. For proving this contention, nobody came in the evidence from the side of respondent No. 1. Merely pleading in the written statement is not sufficient to prove the case of the respondent No.1. The Ld. Courts below have ignored the Jamabandi of respondent No. 1, while passing the order whereas, it is mentioned that Chander Bhan and Chander Pal are sons of Mam Chand. Thus, the findings of Courts below with regard to necessary party are incorrect.

4. It is further submitted that the Ld. Trial Court as well as Ld. Appellate Court, Hisar have not given any finding qua the report of Local Commissioner on 7.12.2013. The application was moved by the plaintiff/appellant on 15.10.2013. When prima facie Court reached to the conclusion that report is necessary to decide the real controversy then this application was allowed for appointment of Local Commissioner on



7.12.2013. But while deciding the issue same has not been considered which is a part of the file, rather it has not been touched by the Courts below while passing the order and judgment, whereas Local Commissioner has specifically mentioned in the report that as per map attached in the suit, there is illegal encroachment of 42.77 sq. yards on the spot of respondent No. 1. But nowhere it has been discussed while passing the order by Courts below so findings on issue No. 1 & 2 have no sustainability.

5. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

6. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant/plaintiff.

7. Brief facts of the case are that the plaintiff had filed a suit seeking decree of possession by demolishing construction over plot No. 719 total measuring 43 sq.yds. as described in the plaint which was owned by the plaintiff. It was alleged that defendant No.1 was in illegal and forcible possession and had illegally constructed one room and boundary wall thereupon in September 2010. It was further pleaded that in the Demarcation Report dated 27.08.2011 of the Tehsildar, Hisar, illegal encroachment of defendant No.1 was proved. So, present suit was filed.

8. Upon notice, defendant No. 1 had resisted the suit by filing written statement, denying the encroachment and averring that



defendant No.1 had constructed upon his own plot No. 728. It was further pointed out that on the one hand, plaintiff is claiming that plot No. 719 is in his exclusive possession; on the other hand, plaintiff is seeking relief against proforma defendants no.2 and 3 who are supposed to be his co-sharers.

9. Upon appraisal of the pleadings, oral and documentary evidence adduced by the parties, the learned Trial Court found that plaintiff had based his claim on two grounds:

- (a) that he had become owner in possession of the plot no. 719 in a settlement arrived at between his brothers; and
- (b) report of demarcation.

10. It was found that regarding ownership, plaintiff had failed to lead any evidence that he had become owner in possession of plot No. 719 by way of a settlement. PW1 Patwari had categorically stated that as per revenue record, no partition had ever taken place regarding the suit property which was admitted to be joint property.

11. As regards the Demarcation Report, the same was discarded on the ground that in the absence of demarcation of adjacent plot No. 728 owned by defendant No.1, it cannot be said that the plot No. 719 had been encroached by defendant No.1.

12. In contradiction thereof, PW3 Hawa Singh Kanungo had stated in his cross-examination that formal demarcation was conducted on plot no. 728. However, he had also admitted that as per the said demarcation, plot no. 728 was found to be correct as per Fard. It has also



been admitted by PW3 that demarcation of plot No. 719 was not done as per Revenue Manual. This totally demolishes the case of the plaintiff.

13. From another perspective, it is also to be considered that Report of PW3 Kanungo to the effect that area of plot No. 719 was 43 sq.yds. and had been encroached upon by defendant No.1, did not inspire confidence as, as per his own statement, PW3 had not located plot No. 728. As such, how could he give a report regarding measurement of plot No. 719. Furthermore, report of PW3 Kanungo was not rightly relied upon by learned Courts below as on the one hand PW3 has stated that no excess area was included on the plot no. 728. Yet, he had given a report that area of plot no. 719 measuring 43 sq.yds had been encroached by defendant No.1; and that too without locating the plot no. 728. Even the present Report (Annexure A-1) has been submitted by Hawa Singh, Kanungo as evident from zimni order dated 15.10.2013 (Annexure A-2) appointing Hawa Singh as Local Commissioner. However, appellant has failed to produce certified copies of the said orders/reports before this Court. Even Civil Suit No. is not mentioned in the photocopies produced by the appellant as Annexures A-1 and A-2. Accordingly, the same cannot be relied upon. Otherwise also, it has been observed by the Courts below that Hawa Singh was appointed as Local Commissioner on the application made by the plaintiff. As such, this report is unreliable as it loses impartiality.

14. Furthermore, previous Demarcation Report was got done by defendant of plot No. 728 Ex.D2/1 in the presence of brother of the



plaintiff and cousin of the plaintiff and their signatures are appended on the said Demarcation Report. Even further defendant No.1 in his examination-in-chief as DW1 has specifically deposed that one brother of the plaintiff, namely, Chander Pal who was co-sharer in the joint suit property, was also co-sharer in plot No. 728 and the said brother Chander Pal had not been arrayed as party. Thus, suit was bad for non-joinder of necessary party.

15. Even otherwise, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellant.

16. Lastly, before parting, it may be pointed out that the present Appeal is of the year 2018 and notice has not yet been issued as since 2018 till date as the matter has been adjourned repeatedly either at request of, or due to non-appearance of learned counsel for the appellant.

17. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

18. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.
19. Pending applications, if any, stand disposed of.

04.09.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No