

**RSA-4900-2014(O&M)****220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-4900-2014(O&M)****Date of decision: 20.02.2025**

Dhan Devi and others

..Appellants

Versus

Smt. Lichhmi (since deceased) through her LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Sweta, Advocate
for Mr. Naveen Singh Panwar, Advocate for the appellants

Mr. Rakesh Dhiman, Advocate for the respondent

ANIL KSHETARPAL, J. (Oral)

1. The defendants have filed this Regular Second Appeal against the First Appellate Court's judgment, which in turn, has reversed the trial court's judgment. The plaintiff Smt. Lichhmi filed a suit for possession of a small portion measuring 6.85 sq. yards. She claimed that the defendants have encroached upon the same. The defendants contested the suit claiming that the suit property is not part of khasra no.1066. During the pendency of the suit, the revenue official was appointed as Local Commissioner to demarcate the properties. In the report Ex.P4, it was reported that the disputed property is a part of khasra no.1066 and has been encroached upon by the defendants. The trial court dismissed the suit on the following two grounds:-

i) Local Commissioner has not been examined. Hence, his report is not proved.



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ii Only a photocopy of Special Power of Attorney has been produced by the plaintiff. Hence, her suit is not maintainable.

2. The First Appellate Court has reversed the decree after noticing that the official from the Registrar's office was examined as PW2 and she brought the original record of special power of attorney executed by the plaintiff in favour of her husband. A copy thereof was kept in court record as Ex.CA. Thus, the objection with regard to photocopy stood rectified.

3. The First Appellate Court also found that the Local Commissioner is the representative of the court and his report is per se admissible, however, it is open to the party to summon the Local Commissioner in order to cross-examine him. However, it is not necessary to examine the Local Commissioner to prove the report.

4. Learned counsel representing the appellants does not dispute that the Local Commissioner was appointed by the court, who demarcated the property and submitted his report Ex.P4.

5. Learned counsel representing the appellants contends that the appellants are prepared to make payment of 6.85 sq.yards.

6. Per contra, the learned counsel representing the respondent submits that efforts to amicably resolve the dispute have failed and if the defendants are permitted to purchase the encroached portion, shape of his (LR of plaintiff) plot would get deformed. He submits that the plaintiff cannot be forced to sell the encroached portion.

7. This Court has considered the submissions made by the learned counsel representing the parties.



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8. Learned counsel representing the appellants has produced photographs which shows that the defendants have made encroachment by covering additional area from the plaintiff's property. There is no major construction over the encroached portion. Only a boundary wall is visible. Moreover, there is merit in the plaintiff's stand to the effect that the shape of his plot will become unusal if he is forced to sell the encroached portion.

9. Keeping in view the aforesaid facts, no ground to interfere is made out.

10. Hence, dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

20.02.2025

rekha

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No