



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

CM-1786-C-2025 in/and
RSA-622-2017
Date of decision: 06.03.2025

JAI BHAGWAN AND ANR.

..Appellants

Versus

SAT NARAIN AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Hooda, Advocate
for the appellants.

Mr. D.K. Tuteja, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

CM-1786-C-2025

1. For the reasons stated in the application for readmission of the appeal which is supported by an affidavit, the application is allowed.
2. CM stands disposed of.
3. Taken on board for final disposal today itself.

Main case

4. Learned counsel for the appellants admits that the appeal qua appellant No.1 is rendered infructuous as he has already delivered possession of 44 sq. yards plot, which was encroached by him, to the plaintiff.
5. He submits that this appeal survives only qua appellant No.2.
6. Defendants assail the correctness of concurrent findings of fact arrived at by the Courts below while decreeing suit for possession of 44 sq. yards and 27 sq. yards, respectively, by Sh. Jai Bhagwan (defendant No.1 before the trial Court) and Sh. Ganga Sarup (defendant No.2 before the trial



Court). After demarcation of the property, the revenue official found that the defendants namely Sh. Jai Bhagwan and Sh. Ganga Sarup have encroached upon 44 sq. yards and 27 sq. yards, respectively, which belongs to the plaintiff. Hence, two separate suits filed by the plaintiffs were decreed, which in appeal has been affirmed by the First Appellate Court.

7. Learned counsel for the appellants submit that while issuing notice of motion, this Court has considered the aspect of fresh demarcation and appellants willingness to pay the market price of the encroached land.

8. Learned counsel for the appellants submits that he is unable to contact appellant No.2. He has been called upon to assist the Court on merits. He submits that appellant No.2 is prepared to pay the market price.

9. This Court has considered the submissions of learned counsel for the parties.

10. In substance, the situation is that appellant No.2, who is an encroacher wants that the Court to help him in purchasing the encroached portion from the owners. This is not the purpose for which the provision for regular second appeal has been envisaged by the Code of Civil Procedure, 1908. The suit was filed in the year 2012. The appellant No.2 continues to occupy encroached portion because the litigation is pending for the last 13 years. Now, the appellant wants to capitalize his encroachment, which cannot be countenanced.

11. Learned counsel for the appellants further submits that this Court should order fresh demarcation. On a Court question, learned counsel for the appellants failed to give any justification as to why such an application was not filed when the suit was filed. The plaintiffs filed the suit



after getting the property demarcated. After having failed in both the Courts below, there is no justification on the part of defendant to pray for fresh demarcation.

12. Dismissed.

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

March 06th, 2025

Ayub

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*