

2025:PHHC:009529



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1210 of 2021 (O&M)

Date of Decision: 22.01.2025

Dalbir Singh and others

.....Appellants

Vs.

Malkeet Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sanjeev Majra, Advocate
for the appellants.

DEEPAK GUPTA, J.

Unsuccessful plaintiffs have approached this Court by way of present Regular Second Appeal against the concurrent findings of the Courts below inasmuch as the suit filed by them for possession of the suit property was dismissed by the trial Court on 15.07.2019 and the appeal filed by the said plaintiffs- appellants was dismissed by the First Appellate Court on 18.02.2020.

2. As per the pleaded case of the plaintiffs, they are owners of a residential house constructed on a '*gair mumkin bara*' measuring 11 marlas comprised in Khewat No.6 min, Khatoni No.8, Khasra No.149 (0-11) as shown in the site plan annexed with the plaint, situated in Village Salempur as per jamabandi for the year 2010-2011. It was claimed that the said house was given to the defendant in brotherhood in June, 2009 but later on defendant refused to vacate the same and as such, decree for possession was sought.

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3. Defendant denied his possession over the house in dispute allegedly constructed in Khasra No.149. According to him, he is owner in possession of his own house which is constructed on a part of Khasra No.154 comprised in Khewat No.148 Khatauni No.166 situated at Village Salempur as per jamabandi for the year 2015-2016 and that the said house was constructed by his father on which he had taken electricity as well as water connection. He refuted the claim of the plaintiffs and prayed for dismissal of the suit.

4. Necessary issues were framed. Evidence produced by the parties was taken on record. The trial Court came to conclusion that the plaintiffs had failed to prove that the suit property, possessed by the defendant was comprised in Khasra No.149 and as such, dismissed the suit. The First Appellate Court confirmed the findings.

5. It is contended before this Court by learned counsel for the appellants-plaintiffs that the Courts below fell in error in not relying upon the demarcation report dated 04.04.2016 (Ex.PW3/A) which reveals that house of the defendant was constructed in Khasra No.149.

6. After going through the paper book, I do not find any merit in the contention.

7. It is observed by the learned First Appellate Court that the suit had been filed on 28.09.2016 whereas the demarcation report Ex.PW3/A relied by the plaintiffs was dated 04.04.2016. Despite the fact that said demarcation report being relied by the plaintiffs was prior to filing of the suit, no reference of the said report was made in the plaint and thus the evidence produced in this regard was beyond pleadings. Not only this, it was found that demarcation was conducted at the back of the defendant inasmuch as no notice was given to the defendant before conducting the demarcation. Still further, Karan Pal, Kanungo who had conducted the demarcation had not stepped

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into the witness box to prove the report. The matter does not stop here as it is further observed by the First Appellate Court that as per the demarcation report, a wall was treated as nucleus point but the report was silent as to whom the wall belonged.

8. For all these reasons, the Courts below did not commit any error in ignoring the report Ex.PW3/A.

9. Not only above, there is nothing on record to show that plaintiffs-appellants made any attempt to get the suit property demarcated after filing of the suit by making necessary application before the Court.

10. In the afore-said circumstances, this Court does not find any ground so as to interfere in the well-reasoned concurrent findings of fact as recorded by the Courts below as plaintiffs- appellants utterly failed to prove that the house possessed by the defendant was comprised in Khasra No.149 owned by the plaintiffs. As such, finding no merit in the present appeal, the same is hereby dismissed.

January 22, 2025

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(DEEPAK GUPTA)

JUDGE

Whether Speaking/reasoned Yes/No

Whether Reportable Yes/No