



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.948 of 2016(O&M)

Reserved on: 26.03.2025

Date of Order: 25.04.2025

Ved Parkash Sharma and others

.Appellants

Versus

Navkiran

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate, with
Mr. Parvinder Singh, Advocate
Ms. Ridhima Khindria, Advocate
for the appellants.

Mr. G.S.Ghuman, Advocate
for the respondent.

ANIL KSHETARPAL, JUDGE (Oral)

I. BRIEF FACTS:-

1. The defendants are in the Regular Second Appeal against the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for possession of two marlas approximately comprised in khasra no.5671, with consequential relief of permanent injunction.

2. The parties to this litigation are neighbours. The plaintiff and defendants have purchased adjoining plots, detail of the same is extracted as under:-

Sr. No.	Sale deed number and date	Seller	Area	Khasra No.	Special Remarks
1	5503	Ved Parkash	10 Marlas	5659,	The purchaser



	24.07.1996	Sharma		51/1715, 5671, 4896, 28608/5652 28609/5652	has been found in possession of 16 Marlas in spite of purchased area of 10 Marlas
2	3397 29.07.2003	Dr. Ravi Sharma Dr. Gargi Sharma (equal shares)	6 Marlas	5653, 28608/5752, 28609/5652	The purchaser has possession of 6 Marlas but it is not in the area of khasra number as per revenue record
3.	6715 03.11.2005	Navkiran	9 Marlas	5671	The purchased area less than 18 marlas is there on khasra no.5671
4.	7820 08.12.2005	Navkiran	9 Marlas	5671	

3. It is evident that the defendants are purchaser of the property prior in point of time then the plaintiff. The plaintiff filed a suit claiming that when she was away along with her husband, defendants have encroached upon approximately two marlas land belonging to her plot.

4, Defendants, on the other hand claim that the plaintiff is in possession of more than 23 marlas of land, although, she purchased only 18 marlas.

5. In order to determine the controversy, the court appointed a Local Commissioner to demarcate the property. On 27.07.2007, the report was submitted to which objections were filed by the defendants.

6. The trial court vide order dated 09.04.2008, directed the Tehsildar-I to submit his fresh detailed report. An application was filed by



the plaintiff for review the order which was dismissed.

7. Subsequently, on 31.12.2008, the operative part of the following fresh report reads as under:-

“Shri Ved Parkash Sharma s/o Late Sh. Bachint Ram:-

As per the sale deed no.5503 dated 24.7.96, 10 marlas was bought from khasra no.5659, 51/1715, 5671, 4896/106645, 28608/5652, 28509/5652 and the possession was also found in the said khasra numbers.

2. Dr. Ravi Sharma and Dr. Gargi Sharma (in equal shares);

As per sale deed no.3397 dated 29.07.2003, 6 Marlas was bought from 5653, 28608/5652, 28609/5652 and on the spot the possession is of area 6 Marlas 114 sq. ft. from khasra no.5671. One kacha room and electricity meter is there and the rest of the land is vacant.

3. Smt. Navkiran wife of Col. B.s.Gill:

As per sale deed no.6715 dated 3.11.2005, 9 Marlas was bought from khasra no.5671 and also as per sale deed no.7820 dated 7.12.2005, 9 Marlas area was bought from khasra no.5671. In this way, Smt. Navkiran had bought 18 Marlas out of khasra no.5671, which is entered in the revenue record. At the time of demarcation, measurement was carried out in the presence of both the parties, by a measuring tape. As per measurement on spot the possession of 17 Marlas 34 sq. ft. was found in possession of Smt. Navkiran, on which, a Kothi is constructed. As per measurement, there is shortage of 173 sq. ft. area of Smt. Navkiran.

This demarcation report has been prepared on the spot and in the presence of both the parties. The report is submitted.”



8. This time the plaintiff filed objections, whereas the defendants accepted the report. Subsequently, the trial court considering all aspects of the matter proceeded to cull out issues on 17.04.2009 and called upon the parties to lead evidence. The trial court decreed the plaintiff's suit, which in appeal has been affirmed by the First Appellate Court.

II. ARGUMENTS ADDRESSED:-

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

10. The learned senior counsel representing the appellants has submitted that objections filed by both the sides were not decided by the court. Hence, the case is required to be remitted back. In the alternative, he submitted that as per the report dated 30.12.2008, there was shortage of 173 square feet in the area of the plaintiff, hence, the suit qua two marlas could not be decreed.

11. Per contra, the learned counsel representing the respondent submits that there is a concurrent findings of fact which requires no interference.

12. This court has considered the submissions of the learned counsel representing the parties.

III. DISCUSSION AND ANALYSIS:-

13. Objections to the first report of the Local Commissioner was filed by the defendants which were accepted and a fresh Local Commissioner was appointed. Second time, only the plaintiff filed



objections and thereafter the court proceeded to cull out the issues and called upon the parties to lead evidence. Hence, the submission of the learned counsel representing the appellants (defendants) is not correct.

14. The total area of two marlas in terms of square yard comes to be around 60.50 square yards equivalent to 544.5 square feet. As per the report of the Local Commissioner, who was a senior revenue official, there is a shortage/deficiency of 173 square feet area in possession of the plaintiff. The plaintiff has purchased 18 marlas land and she is found to be in possession of 17 marlas and 34 square feet. Hence, the courts were required to decree the plaintiff's suit only with respect to 173 square feet from the adjoining area in possession of the defendants. There is no occasion for the courts below to decree the suit for possession of 544.5 square feet. A bare perusal of the layout plan Ex.P1 shows that in the house of the plaintiff, some portion of the defendants' house is protruding. In fact, the house of defendants is located on north-eastern side of plaintiff's house. Hence, the decree for possession will be of 173 square feet area from South-Western portion of defendants' house. The plaintiff, who has purchased 18 marlas land is not entitled to more than the area purchased by her. The deficiency of the plaintiff is required to be made good, however, she cannot claim possession of more than the area purchased by her.

IV. **DECISION:-**

15. Accordingly, the judgments passed by the courts below are modified and there shall be decree for possession of 173 square feet in favour of the plaintiff.

16. With these observations, the present appeal is partly allowed



while modifying the judgments of the courts below.

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

(ANIL KSHETARPAL)
JUDGE

25th April, 2025

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