

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1497 of 1989 (O/M)
Date of decision : 14.10.2015

Tek Chand and others

..... Appellants

Versus

Siri Ram (deceased) through LRs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arnav K. Sood, Advocate, for,
Mr. Amit Jain, Advocate, for the appellants.

Mr. Adarsh Jain, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 24.5.1989, passed by the learned Additional District Judge, Faridabad, allowing the appeal of the plaintiffs, decreeing the suit of the plaintiffs and reversing the judgment and decree dated 22.8.1988, passed by the learned Sub Judge, IIIrd Class, Faridabad, vide which the suit of the plaintiffs was decreed partly. The defendants were given 15 days' time to hand over the possession of the suit land and Dharmasala to the plaintiffs.

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The brief controversy involved in this case is that the plaintiffs filed the suit in representative capacity on behalf of propriety body of village Panhera Khurd, Tehsil Ballabgarh, District Faridabad, claiming that the suit land measuring 1 kanal was given to the predecessor of the defendants, so as to get income out of the same and maintain the village Dharamshala from that income. Infact, defendants No. 1 to 4 are not maintaining the same and, therefore, the possession of the land was claimed back. The lower Court decreed the suit partly. Before the appellate Court, the parties arrived at some sort of understanding and agreed to the appointment of the local commissioner on the terms and conditions, the relevant extracts thereof from the judgment dated 24.5.1989, passed by the learned Additional District Judge, Faridabad, are reproduced below :-

3. During the course of arguments in the appeal, learned counsel for the parties as well as Shri Ram appellant and Balbir Singh respondent made a statement in writing that the Dharamshala be inspected by the Court or by a Local Commissioner appointed by the court and in case it is found that services were being rendered to Dharamshala and it was kept clean and water was being provided, then the appeal be dismissed and if was found otherwise, then the appeal be allowed and the suit be decreed. Miss Shakuntla Tewatia Advocate was appointed Local Commissioner and she was directed to inspect the spot immediately. She inspected the spot in the presence of the parties present and has submitted her report. I have also recorded the statement of Balbir Singh one of the respondent-defendant wherein he has admitted that Miss Shakuntla Tewatia Advocate has inspected the spot.”

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Accordingly, the local commissioner submitted its report and the lower appellate Court made the following observations :-

“4. In her written report, Local Commissioner has mentioned that the Dharamshala consists of 5 rooms but neither there was any provision for water nor water was available. The well was also dry. There were no pitchers. The rooms were so dirty that it was difficult to peep into it and these were giving foul smell. The entire Dharamshalla was lying in an abandoned condition and there was dirt around it. She has also mentioned that Dharamshala has not been cleaned or swept for the last many years. The rooms were full of dirt.”

Therefore, in view of the report of the local commissioner, the impugned judgment and decree was passed.

I am of the view that the parties had voluntarily made their statements for appointment of the local commissioner. The local commissioner immediately visited the spot and made the report. There is nothing to dispute the facts mentioned in the report submitted by the local commissioner to show that the Dharamshala is in a bad shape and is lying abandoned. Therefore, the findings of facts were rightly recorded. Hence, no substantial question of law arises in the present appeal. As such, there are no merits in the present appeal and the same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

14.10.2015
sjks