

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 3334 of 2015 (O&M)

Date of decision: 12.08.2015

Surajmal

... Appellant

versus

Mulakh Raj and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sandeep Goyat, Advocate for the appellant.

K.Kannan, J.

The appeal is against the judgment of the Appellate Court setting aside the judgment of the trial Court and remanding the matter to the trial Court for fresh consideration after carrying out the demarcation by the competent revenue officer at the cost of both the parties. Any decision remanding the matter by disposing of the appeal, is done under Order 41 Rule 23A CPC and the Registry shall only entertain it as an appeal against the order (FAO) under Order 43 Rule 1(u) CPC. The Registry ought not to number it as RSA and post for consideration for substantial questions of law. I will treat therefore, this Regular Second Appeal as an appeal against the order and dispose it off with the observation that the Appellate Court's assessment that the report had not been properly drawn is not liable to be interfered with. The counsel sought to argue that two regular points have been fixed and the measurements were brought about but the Court has observed that 3 points at least must

be taken in the manner directed by the proceedings of the Director and as contained in the manual. The counsel would argue that two points are sufficient. I do not think the matter to be such an issue the High Court can interfere with the adequacy of two points or three points. The Appellate Court has referred to some judgments and instructions to find that the report is not satisfactory. Even the arguments made by the counsel that the defendant did not object to the manner of demarcation carried out by the Revenue Official has no substance, for, the decree which is made to depend on the report has assailed in appeal. The challenge to the report was fully competent in the manner contemplated under Section 105 CPC by taking the issue of unreliability of the report as a ground of appeal. There would be no issue of estoppel against the party from contending about the correctness of the report by the only fact that he did not make any objection to the Local Commissioner as soon as the report was filed.

I see no cause for intervention. The Regular Second Appeal is dismissed.

(K.KANNAN)
JUDGE

12.08.2015

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