

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

**SAO No.84 of 2011 (O&M)
Decided on: 14.09.2016**

Harbans Singh and another

....Appellants

Versus

Chhajju Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. S.S. Salar, Advocate
for the appellants.

Mr. Vijay Sharma, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

The present appeal has been directed against order dated 21.10.2011 passed by the Additional District Judge, Patiala whereby the appeal preferred by the respondent/plaintiff against dismissal of suit has been partly allowed, the judgment and decree passed by the trial Court has been set-aside and the matter has been remitted to the trial Court for decision afresh.

Counsel for the appellants has submitted that remand of the case by the Appellate Court, in the circumstances of the present case, does not fall within the ambit of any of the rules envisaged under Order 41 of the Code of Civil Procedure (in short 'CPC'). It is further submitted that the Appellate Court has not set-aside the findings of the trial Court on various issues answered against the respondents but remanded the matter for decision afresh after getting fresh demarcation conducted and giving full opportunity to both the parties by saying that bone of contention is demarcation of the suit land. It is further

submitted that if the Court of appeal was of the opinion that any fresh demarcation of the suit land was required, the Court was well within its power to appoint a revenue official for conducting demarcation at the spot and decide the appeal on the basis of materials on record and the demarcation report, if any.

Counsel for the respondent/plaintiff, on the contrary, has submitted that directions issued by the Court of appeal for conducting a fresh demarcation in presence of the parties, strictly in accordance with the instructions of the Financial Commissioner incorporated in the High Court Rules and Orders Volume 1 Chapter 1 Part M(i) titled 'Procedure in "Hadd Shikni" cases, do not warrant intervention.

I have heard counsel for the parties and perused the paperbook particularly the judgment passed by the trial Court as well as Court of appeal.

The respondent/plaintiff filed a suit for possession of land measuring 06 kanals 17 marlas situated in the revenue limits of Village Kakrala, Tehsil Nabha, District Patiala as per *Jamabandi* for the year 1999-2000 on the basis of demarcation report dated 25.05.2002, on the premise that Khewat No.248 was orally partitioned amongst its co-owners about 10 years ago and defendants/appellants encroached upon some land of respondent/plaintiff after harvest of *Harri* crop of the year 2002. He filed an application for demarcation of land and got the demarcation conducted from Field Kanugo on 25.05.2002 depicting that the appellants/defendants have encroached upon land measuring 06 kanals 17 marlas belonging to the plaintiff.

The appellants/defendants filed their written statement

raising certain preliminary objections *inter alia* maintainability, cause of action, *locus standi*, limitation, misjoinder and non-joinder of parties and estoppel, etc. They have denied the respondent/plaintiff to be a co-owner of Khewat No.248 and further denied their having encroached upon any land belonging to the respondent/plaintiff.

The learned trial Court framed ten issues, permitted the parties to adduced evidence in support of their respective claims. After going through the materials on record, in the light of rival submissions made by counsel for the parties, Issues No.1 to 3, 6 and 7 were answered against the respondent/plaintiff whereas Issues No.4, 5, 8 and 9 were answered against the defendants/appellants and eventually suit of the plaintiff was ordered to be dismissed. The Court of appeal did not advert to the findings of the trial Court on Issues No.1 to 3, 6 and 7 nor set-aside those findings with a finding that a retrial is necessary justifying remand of the case in exercise of jurisdiction under Order 41 Rule 23-A CPC. Counsel for the respondent has not referred to any other rule under which the present situation can be covered to justify remittance of the case to the trial Court for decision afresh after getting fresh demarcation conducted. Counsel for the parties have not disputed that if the Court of appeal was not convinced with the demarcation earlier got conducted by the respondent/plaintiff and thought it fit that a fresh demarcation is required to be conducted in compliance with the provisions made in High Court Rules and Orders, the Court of appeal was competent to make such an order, appointing a revenue official for conducting demarcation at the spot.

In view of the above, the order impugned cannot be

allowed to sustain and accordingly set-aside. However, the Court of appeal would be at liberty to pass an appropriate order, if any fresh demarcation is warranted in the circumstances of the present case and thereafter decide the appeal on the basis of materials already on record and the fresh demarcation report, if any.

In view of what has been discussed hereinabove, the appeal is allowed, the impugned judgment is set-aside and the matter is remitted to the Court of appeal for decision afresh on merits, in accordance with law.

14.09.2016
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(REKHA MITTAL)
JUDGE

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