

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

RSA No.4855 of 2016 (O&M)

Date of decision:20.09.2016

Smt. Asha Devi and others

...Appellants

Vs.

Chhail Mohan Sharma and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shiv Kumar, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, the suit for possession of the property in dispute, has been decreed.

Mr. Shiv Kumar, learned counsel appearing on behalf of the appellant-defendants submits that the Courts below heavily relied upon the report of Local Commissioner Ex.P12, primarily on the ground that the defendants did not contest the same. The fact remains that report of the Local Commissioner is not in accordance with High Court Rules and Orders. He did not point out encroachment and the pleadings are lacking particulars of the encroachment, therefore, the suit is liable to be dismissed and there is illegality and perversity in the findings under challenge and thus, prays for setting aside the judgments and decrees of the Courts below.

I have heard learned counsel for the appellant-defendants and

appraised the judgments and decrees of the Courts below.

Before appreciating the aforementioned submissions, I would like to ponder upon the categoric averments made in the written statement, wherein, it has been admitted that some land was in possession of the defendants. In essence, if at all they are in possession, they have become owners. The defendants have admitted the ownership, much less, encroachment. In my view, the report of the Local Commissioner is per pleadings of the respective parties. Once there is indirect admission of the encroachment, plea of admission has lost its sanctity at this stage. When I was dictating the judgment, on instructions from his clients, Mr. Shiv Kumar, made a request that his clients are willing to compensate the respondents in terms of money. The appellants would be at liberty to do the same but not at this stage when they have lost the opportunity before both the Courts below.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 20, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No