

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

**SAO No.1 of 2014 (O&M)
Decided on: 01.03.2016**

Kirpa Shankar and another

....Appellants

Versus

Suman Lata Gupta and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Achin Gupta, Advocate for the appellants.

Ms. Anna Bansal, Advocate
for Mr. Ram Lal Gupta, Advocate
for respondents No.1 and 2.

Mr. G.C. Garg, Advocate for respondent No.3.

REKHA MITTAL J. (Oral)

The present appeal lays challenge to order dated 28.11.2013 passed by the Additional District Judge (Fast Track Court) Bathinda, whereby the appeal filed by the respondents has been 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 adjudication afresh by deciding the application filed by respondents/defendants for appointment of local commissioner that remain to be decided at the time of final disposal of the suit.

Counsel for the appellants has submitted that a similar application for appointment of a local commissioner was filed before the First Appellate Court and the Appellate Court was well within its power to appoint a local commissioner if found

expedient in the interest of justice but the mere fact that an application filed by the respondents for appointment of local commissioner before the trial Court was not decided at the time of final disposal of the suit cannot be allowed to enure to the benefit of the respondents who have failed to prove their case. It is further submitted that the impugned order may be set-aside with a direction to the First Appellate Court to decide the application for appointment of a local commissioner and thereafter to decide the appeal on its merits.

Counsel for respondents No.1 and 2, on the contrary, has submitted that as the learned trial Court did not dispose of the application for appointment of local commissioner, no error much less illegality can be found in the order passed by the Appellate Court in setting-aside the judgment and decree and remitting the matter to the trial Court for decision afresh by disposing of the application for appointment of local commissioner. It is further argued that in pursuance of the directions issued by First Appellate Court, the learned trial Court has already disposed of the application for appointment of a local commissioner in favour of the respondents and the local commissioner has already submitted a report before the trial Court. It is further argued that keeping in view the developments that took place subsequent to decision by the First Appellate Court, it would be in the fitness of things that the matter is left to be decided by the trial Court on the basis of

evidence already on record as well as report of the local commissioner.

I have heard counsel for the parties and perused the records.

There is no dispute that the learned trial Court decided the suit without disposing of the application filed by respondents for appointment of a local commissioner. It is incumbent upon the trial Court to ensure that all miscellaneous applications are disposed of before deciding the matter finally. Counsel for the respondents has apprised the Court that subsequent to the order passed by First Appellate Court, the trial Court has already decided the application for appointment of local commissioner and the local commissioner has already submitted a report before the trial Court. In the given circumstances of the present case, I do not find any merit in the submissions made by counsel for the appellants that the order passed by the Court in appeal is liable to be set-aside on any score whatsoever.

For the foregoing reasons, the appeal is dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(REKHA MITTAL)
JUDGE

01.03.2016

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